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.
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## CONSTITUTIONAL AMENDMENT, 2017

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First Extraordinary Session, 2017

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

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

**OFFICERS**

*President:* Mitch Carmichael – Ripley  
*Clerk:* Clark Barnes – French Creek  
*Sergeant-at-Arms:* Andrew Palmer – Charleston  
*Doorkeeper:* Jeffrey Branham – Cross Lanes

<table>
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</thead>
<tbody>
<tr>
<td>Azinger, Mike (R)</td>
<td>3rd</td>
<td>Vienna</td>
<td>Manager, Contractor Group</td>
<td>Appt. 5/1985, 73rd – 79th (House); 80th – 83rd</td>
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<tr>
<td>Beach, Bob (D)</td>
<td>13th</td>
<td>Morgantown</td>
<td>Appt. 5/1998, 73rd – 79th (House)</td>
<td>75th – 80th (House); 81st – 83rd</td>
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<td>Blair, Craig (R)</td>
<td>15th</td>
<td>Martinsburg</td>
<td>Appt. 5/2002, 76th – 79th (House)</td>
<td>76th – 79th (House); 79th – 83rd</td>
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<td>Boley, Donna (R)</td>
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<td>Appt. 5/14/85; 67th; 68th – 83rd</td>
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<td>Boso, Greg (R)</td>
<td>11th</td>
<td>Summersville</td>
<td>Appt. 1/2017, 83rd</td>
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<td>Carmichael, Mitch (R)</td>
<td>4th</td>
<td>Ripley</td>
<td>Director of Commercial Sales</td>
<td>75th – 80th (House); 81st – 83rd</td>
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<tr>
<td>Clements, Charles H. (R)*</td>
<td>2nd</td>
<td>New Martinsville</td>
<td>Retired</td>
<td>77th (House); Appt. 1/2017, 83rd</td>
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<tr>
<td>Cline, Sue (R)</td>
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<td>Brenton</td>
<td>Real Estate Agent</td>
<td>Appt. 1/2016, 82nd; 83rd</td>
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<td>Facemire, Doug (D)</td>
<td>12th</td>
<td>Sutton</td>
<td>Owner, Grocery Chain</td>
<td>79th – 83rd</td>
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<tr>
<td>Ferns, Ryan (R)</td>
<td>1st</td>
<td>Wheeling</td>
<td>Physical Therapist</td>
<td>80th – 81st (House); 83rd</td>
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<td>Gaunch, Ed (R)</td>
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<td>Charleston</td>
<td>Retired/Former President/ Insurance</td>
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<td>Hall, Mike (R)</td>
<td>4th</td>
<td>Winfield</td>
<td>Appt. 1/2016, 83rd</td>
<td>72nd – 77th (House); 78th – 83rd</td>
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<tr>
<td>Jeffries, Glenn (D)</td>
<td>8th</td>
<td>Red House</td>
<td>Businessman</td>
<td>Appt. 1/2016, 83rd</td>
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<td>Karnes, Robert (R)</td>
<td>11th</td>
<td>Tallmansville</td>
<td>Information and Technology Field Services</td>
<td>82nd – 83rd</td>
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<tr>
<td>Mann, Kenny (R)</td>
<td>10th</td>
<td>Ballard</td>
<td>Appt. 1/2016, 83rd</td>
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<td>Maroney, Mike (R)</td>
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<td>Maynard, Mark (R)</td>
<td>6th</td>
<td>Genoa</td>
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<td>Miller, Ronald (D)</td>
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<td>Mullins, Jeff (R)</td>
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<td>Shady Spring</td>
<td>Appt. 1/2016, 83rd</td>
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<tr>
<td>Ojeda II, Richard (D)</td>
<td>7th</td>
<td>Holden</td>
<td>Appt. 1/2016, 83rd</td>
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<tr>
<td>Palumbo, Corey (D)</td>
<td>17th</td>
<td>Charleston</td>
<td>Appt. 1/2016, 83rd</td>
<td>82nd – 83rd</td>
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<tr>
<td>Plymale, Robert (D)</td>
<td>5th</td>
<td>Huntington</td>
<td>Appt. 1/2016, 83rd</td>
<td>71st – 83rd</td>
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<td>Prezioso, Roman (D)</td>
<td>13th</td>
<td>Fairmont</td>
<td>Appt. 1/2016, 83rd</td>
<td>69th – 73rd (House); 73rd – 83rd</td>
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</tbody>
</table>

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

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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, Pethtel

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, Pethtel

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

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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 Iaquinta, 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

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AGRICULTURE AND RURAL DEVELOPMENT

Senators Sypolt (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.

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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), Sypolt (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.

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Senators Weld (Chair), Boley (Vice Chair), Azinger, Clements, Cline, Sypolt, Facemire, Ojeda, Palumbo.
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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.
(a) Any person licensed by, or certified or registered in, this state or another state to provide health care or professional health care services: (1) Who is in attendance at an athletic event sponsored by a public or private elementary or secondary school; and (2) who gratuitously and in good faith agrees to render emergency care or treatment to any participant during the event in connection with an emergency arising during or as the result of the event, without objection of the participant, may not be held liable for any civil damages as a result of the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment.

(b) The limitation of liability established by the provisions of this section does not apply to acts or omissions constituting gross negligence or willful misconduct. For purposes of this section, the term “athletic event” includes 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.

(a) As used in this section:

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

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

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

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

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

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

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

(5) “Seller” means a wholesaler, distributor, retailer, or other individual or entity, other than a manufacturer, that is regularly engaged in the selling of a product whether the
(b) No product liability action shall be maintained against a seller, unless:

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

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

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

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

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

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

(5) The seller resold the product after the product’s first sale for use or consumption and the product was not in substantially the same condition as it was at the time the product left the possession of the manufacturer and the
changed condition of the product was a proximate cause of the harm for which recovery is sought;

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

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

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

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

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

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

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

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

(12) The manufacturer is insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business: Provided, That a manufacturer who has been judicially declared insolvent or is no longer in existence through dissolution is conclusively
presumed for the purposes of this subdivision to be insolvent; or

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

(c) The provisions of this section apply to any civil action involving a product that was sold on or after the 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.

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

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

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

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

3. Any group accident, sickness or income disability insurance, any casualty or property insurance, including automobile and homeowners’ insurance, which provides medical benefits, income replacement or disability coverage, or any other similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured’s employer, has paid all or part of the
premium or made an economic contribution on behalf of the plaintiff; or

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

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

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

e) “Health care” means:

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

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

(3) The process employed by health care providers and health care facilities for the appointment, employment, contracting, credentialing, privileging and supervision of health care providers.
(f) “Health care facility” means any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care community, end-stage renal disease facility, home health agency, child welfare agency, group residential facility, behavioral health care facility or comprehensive community mental health center, intellectual/developmental disability center or program, or other ambulatory health care facility, in and licensed, regulated or certified by the State of West Virginia under state or federal law and any state-operated institution or clinic providing health care and any related entity to the health care facility.

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

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

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

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

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

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

(n) “Plaintiff” means a patient or representative of a patient who brings an action for medical professional liability under this article.
(o) “Related entity” means any corporation, foundation, partnership, joint venture, professional limited liability company, limited liability company, trust, affiliate or other entity under common control or ownership, whether directly or indirectly, partially or completely, legally, beneficially or constructively, with a health care provider or health care facility; or which owns directly, indirectly, beneficially or constructively any part of a health care provider or health care facility.

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

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

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

(b) A cause of action for injury to a person alleging medical professional liability against a nursing home, assisted living facility, their related entities or employees or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees arises as of the date of injury, except as provided in subsection (c) of this section, and must be commenced within one year of the date of such injury, or within one year of the date when such person discovers, or with the exercise of reasonable diligence, should have discovered such injury,
whichever last occurs: Provided, That in no event shall any such action be commenced more than ten years after the date of injury.

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

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

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

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

(a) Notwithstanding any other provision of this code, no person may file a medical professional liability action against any health care provider without complying with the provisions of this section.
(b) At least thirty days prior to the filing of a medical professional liability action against a health care provider, the claimant shall serve by certified mail, return receipt requested, a notice of claim on each health care provider the claimant will join in litigation. The notice of claim shall include a statement of the theory or theories of liability upon which a cause of action may be based, and a list of all health care providers and health care facilities to whom notices of claim are being sent, together with a screening certificate of merit. The screening certificate of merit shall be executed under oath by a health care provider qualified as an expert under the West Virginia rules of evidence and shall state with particularity: (1) The expert’s familiarity with the applicable standard of care in issue; (2) the expert’s qualifications; (3) the expert’s opinion as to how the applicable standard of care was breached; and (4) the expert’s opinion as to how the breach of the applicable standard of care resulted in injury or death. A separate screening certificate of merit must be provided for each health care provider against whom a claim is asserted. The person signing the screening certificate of merit shall have no financial interest in the underlying claim, but may participate as an expert witness in any judicial proceeding. Nothing in this subsection may be construed to limit the application of Rule 15 of the Rules of Civil Procedure.

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

(d) Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees or a distinct part of an acute care
hospital providing intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within sixty days of the date the health care provider receives the notice of claim.

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

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

(g) Upon receipt of the notice of claim or of the screening certificate of merit, if the claimant is proceeding pursuant to the provisions of subsection (d) or (e) of this section, the health care provider is entitled to prelitigation
mediation before a qualified mediator upon written demand to the claimant.

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

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

(2) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled one
hundred eighty days from the date of mail of a notice of claim to thirty days following receipt of a response to the notice of claim, thirty days from the date a response to the notice of claim would be due, or thirty days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

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

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

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

(a) The provisions of House Bill 149, enacted during the first extraordinary session of the Legislature, 1986, shall be effective at the same time that the provisions of Enrolled Senate Bill 714, enacted during the regular session of the Legislature, 1986, become effective, and the provisions of said House Bill 149 shall be deemed to amend the provisions of Enrolled Senate Bill 714. The provisions of this article shall not apply to injuries which occur before the effective date of said Enrolled Senate Bill 714.
The amendments to this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, apply to all causes of action alleging medical professional liability which are filed on or after March 1, 2002.

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

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

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


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

(b) If any provision of the amendments to section five of this article, any provision of section six-d of this article
or any provision of the amendments to section eleven, article six, chapter fifty-six of this code as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, is held invalid, or the application thereof to any person is held invalid, then, notwithstanding any other provision of law, every other provision of said House Bill 601 shall be deemed invalid and of no further force and effect.

(c) If any provision of the amendments to section six or ten of this article or any provision of section six-a, six-b or six-c of this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, is held invalid, the invalidity does not affect other provisions or applications of this article, and to this end, 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.
(a) Except where it is otherwise provided by law, every judgment or decree for the payment of money, whether in an action sounding in tort, contract, or otherwise, entered by any court of this state shall bear simple, not compounding, interest, whether it is stated in the judgment decree or not.

(b) Prejudgment – In any judgment or decree that contains special damages, as defined below, or for liquidated damages, the court may award prejudgment interest on all or some of the amount of the special or liquidated damages, as calculated after the amount of any settlements. Any such amounts of special or liquidated damages shall bear simple, not compounding, interest. Special damages include lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the court. If an obligation is based upon a written agreement, 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 and, after that, the judgment interest is the same rate as provided for below in subsection (c) of this section.

(1) Notwithstanding the provisions of section five, article six, chapter forty-seven of this code, 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, as determined by the court and that established rate shall remain constant from that date until the date of the judgment or decree, notwithstanding changes in the federal reserve district discount rate in effect in subsequent years prior to the date of the judgment or decree: Provided, That the rate of the prejudgment interest may not exceed nine percent per annum or be less than four percent per annum. The administrative office of the Supreme Court of Appeals shall annually determine the prejudgment interest rate to be paid upon judgment or decrees for the payment of money and shall take appropriate measures to
notify the courts and members of the West Virginia State Bar of the rate of interest in effect for the calendar year in question. Once the rate of prejudgment interest is established as provided in this section, that established rate shall remain constant for the prejudgment interest for that particular judgment or decree, notwithstanding changes in the Federal Reserve District discount rate in effect in subsequent years.

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

(c) Post-judgment - Notwithstanding the provisions of section five, article six, chapter forty-seven of this code, the rate of post-judgment interest on judgments and decrees for the payment of money 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: Provided, That the rate of post-judgment interest may not exceed nine percent per annum or be less than four percent per annum. The administrative office of the Supreme Court of Appeals shall annually determine the post-judgment interest rate to be paid upon judgments or decrees for the payment of money and shall take appropriate measures to promptly notify the courts and members of the West Virginia State Bar of the rate of interest in effect for the calendar year in question. Once the rate of interest is established by a judgment or decree as provided in this section that established rate shall after that remain constant for that particular judgment or decree, notwithstanding changes in the Federal Reserve District discount rate in effect in subsequent years.
(d) Amendments to this section enacted by the Legislature during the 2017 regular session become 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.

(a) As used in this section:
(1) “Person” means an individual, proprietorship, partnership, corporation, club or other legal entity; and

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

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

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

(d) Actions authorized by the provisions of this section are not applicable to any indoor shooting range, the owner or operator of which holds all necessary and required licenses and the shooting range being in compliance with all applicable state, county and municipal laws, rules or
ordinances regulating the design and operation of such facilities.

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

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

(f) It is the intent of the Legislature in enacting the amendments to this section during the 2017 regular session of the Legislature that the amendments be applied retroactively.
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 person growing industrial hemp for commercial purposes shall apply to the commissioner for license on a form prescribed by the commissioner.

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

(c) The commissioner shall require each first-time applicant for a license to file a set of the applicant’s fingerprints, taken by a law-enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the criminal investigation bureau of the department of justice for state
processing and with the Federal Bureau of Investigation for federal processing. All of the costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential. The commissioner may use the records only to determine if an applicant is eligible to receive a license for the production of industrial hemp.

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

(e) Notwithstanding any provision of this article, rule or the provisions of chapter sixty-a of this code to the contrary, the Commissioner of Agriculture may license qualified persons and state institutions of higher learning to lawfully grow or cultivate industrial hemp in this state, but institutions of higher learning may only lawfully grow 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.]
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.

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

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

(c) A person who:

(1) Owns and operates an apiary;

(2) Is registered with the commissioner; and

(3) Operates the apiary in a reasonable manner and in conformance with the West Virginia Department of Agriculture’s written best management practices provided by rule, is not liable for any personal injury or property damage that occurs in connection with the keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries and appliances. The limitation of liability established by this section does not apply to
27 intentional tortious conduct or acts or omissions 
28 constituting gross negligence.

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.

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

§19-14-5. Permits; registration.

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

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

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

(d) Each person first distributing commercial feed into West Virginia trade channels must obtain a Commercial Feed Distributor Permit, except: (1) Persons distributing pet
food exclusively, (2) persons holding a valid Commercial Feed Manufacturing Permit, and (3) persons distributing only those feeds that they register. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Distributor Permit application shall be accompanied by an application fee of $10. Each permit issued shall expire on December 31, next following the date of issue.

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

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

(2) On the thirty-first day of August, 1991, permanent registrations for pet food in packages over ten pounds are void and application for registration and payment of fees will be required. Pet food, including specialty pet foods, in packages over ten pounds or bulk shall be registered annually. A registration fee of $50 per product shall accompany each application for registration. The registration shall expire on the thirty-first day of August next following the date of issue: Provided, That until June 30, 2027, an additional registration fee of $50 per product shall accompany each application for registration and the
additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.

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

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

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

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

(a) The commissioner shall prepare and currently maintain a master road and highway map which will show all of the state roads and highways located, created and classified as provided by law; the mileage of roads and highways; the status of improvements; and travel conditions when practical. The commissioner may make economical reproductions of the map for official use and public information purposes, including a digital road map. The
goal is for the maps to be computerized and searchable by the public to map routes for travel throughout the state.

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

(a) As used in this chapter:

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

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

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

(4) “Off-highway vehicle” means a vehicle intended for off-highway use and includes all-terrain vehicles, utility-terrain vehicles, motorcycles and off-road vehicles;
(5) “Off-road vehicle” means a vehicle that is suitable for off-road use. It includes a four-wheel drive vehicle such as a Jeep, pickup or sport utility vehicle. It also includes a specially designed, modified or customized off-road vehicle that is of a similar size to a vehicle manufactured for highway use.

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 15. ATV AND OHV RESPONSIBILITY ACT.


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

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

(2) “Authorized outfitter” or “licensee” means a commercial outfitter, which is a person, partnership, limited liability company, corporation, other organization, or any combination thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, or other regional recreation authorities, who operates from any temporary or permanent camp, private or public lodge, or private home, who provides guided tours or the rental of all-terrain vehicles, utility-terrain vehicles or motorcycles for use on assigned lands for monetary profit or gain.
(3) “Low-pressure tire” means every tire in which twenty pounds per square inch or less of compressed air is designed to support the load.

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

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

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

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

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

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

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<th>TITLE II – APPROPRIATIONS.</th>
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<td>Section 1. Appropriations from general revenue.</td>
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<td>Fund 0226 FY 2017 Org 0221</td>
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<td>5 Appointed Counsel Fees –</td>
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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 16100, 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.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60 – Division of Health
Central Office

(WV Code Chapter 16)

Fund 0407 FY 2017 Org 0506

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
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<tbody>
<tr>
<td>04599</td>
<td>$ 499,045</td>
</tr>
<tr>
<td>22399</td>
<td>2,089,176</td>
</tr>
</tbody>
</table>

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

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

64 – Division of Human Services

(WV Code Chapters 9, 48 and 49)
Fund 0403 FY 2017 Org 0511

Appro- General
priation Revenue
23a Capital Outlay, Repairs, Fund
and Equipment – Surplus (R)..... 67700 $ 263,640

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs, and Equipment – Surplus (fund 0403, appropriation 67700) at the close of the fiscal year 2017 is hereby reappropriated for expenditure 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

7

8 Appropriation

9 State Road Fund

10 2 Maintenance...........................23700 $ 5,000,000

11 8 General Operations ...............27700 10,000,000

And, 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 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 –
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:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

148 – Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2017 Org 0222

<table>
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<tr>
<th>Appropriation</th>
<th>Other Funds</th>
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<tbody>
<tr>
<td>4 Current Expenses .................... 13000</td>
<td>$ 750,000</td>
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</tbody>
</table>

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:

| Title II – APPROPRIATIONS. | DEPARTMENT OF EDUCATION |
|---------------------------|
| Sec. 6. Appropriations of federal funds. | 330 – State Board of Education – School Lunch Program |
| Fund 8713 FY 2017 Org 0402 |

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
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<td>Current Expenses ....................</td>
<td>$15,000,000</td>
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</tbody>
</table>

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**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:

<table>
<thead>
<tr>
<th>Title II – APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 6. Appropriations of federal funds.</td>
</tr>
</tbody>
</table>

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

345 – Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2017 Org 0511

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
</tr>
<tr>
<td>Medical Services</td>
<td>18900</td>
</tr>
</tbody>
</table>
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 RESOURCES

4 198 – Division of Health –

5 Laboratory Services Fund

6 (WV Code Chapter 16)

7 Fund 5163 FY 2017 Org 0506

8

4 Current Expenses .................... 13000 $ 295,000

And, That the total appropriation for the fiscal year ending June 30, 2017, to fund 5214, 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 RESOURCES

4 202 – Division of Health –

5 West Virginia Birth-to-Three Fund

6 (WV Code Chapter 16)

7 Fund 5214 FY 2017 Org 0506
And, That the total appropriation for the fiscal year ending June 30, 2017, to fund 5090, fiscal year 2017, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

206 – Division of Human Services – Health Care Provider Tax –

Medicaid State Share Fund

Fund 5090 FY 2017 Org 0511

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  

<table>
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<tr>
<th>Appropriation</th>
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<tr>
<td>0100</td>
<td>185,647</td>
</tr>
<tr>
<td>07000</td>
<td>105,000</td>
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</table>
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 – Workforce Investment Act
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.

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

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

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

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

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

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

(1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with the Insurance Commissioner and apply for a license with the Insurance Commissioner to transact insurance in this state. Notwithstanding any other
provision of this code, the Insurance Commissioner shall act on the documents within fifteen days of the filing by the company.

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

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

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless the deadline is extended by the Insurance Commissioner.
(c) For the duration of its existence, the company is not a department, unit, agency or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, are the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

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

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

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

(1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policyholders. The surcharge percentage shall be calculated by dividing the previous fiscal year’s total premiums collected plus deductible payments by all employers into the portion of the Insurance Commissioner’s budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policyholder’s premium payment and deductible payments as a surcharge and remitted to the
Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of premium payments;

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

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

(2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing previous year’s self-insured payroll in the state into the portion of the Insurance Commissioner’s budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer’s payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Industrial Council may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the Insurance Commissioner with all required information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The surcharge shall be calculated so as to
only defray the costs associated with the administration of
this chapter and the funds raised shall not be used for any
other purpose except as set forth in subdivision (4) of this
subsection.

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

(B) By May 1 each year, the self-insured employer
community shall be assessed a cumulative total of $9
million. The methodology for the assessment shall be fair
and equitable and determined by exempt legislative rule
issued by the Industrial Council. The amount collected
pursuant to this subdivision shall be remitted to the
Insurance Commissioner for deposit in the Workers’
Compensation Debt Reduction Fund created in section five,
article two-d of this chapter: Provided, That,
notwithstanding any provision of this subdivision or any
other provision of this code to the contrary, if the budget
shortfall, as determined by the state Budget Office as of
December 1, 2015, is greater than $100 million, then the
Governor may, by Executive Order, redirect deposits of the
amount collected pursuant to this subdivision, for any
period commencing after February 29, 2016, and ending
before July 1, 2016, to the General Revenue Fund, instead
of to the fund otherwise mandated in this subdivision, in
article two-d, chapter twenty-three of this code or in any
other provision of this code: Provided, however, That,
notwithstanding any provision of this subdivision or any
other provision of this code to the contrary, the Governor
may, by Executive Order, redirect one-half of the deposits
of the amount collected pursuant to this subdivision, for any
period commencing after June 30, 2016, and ending before
July 1, 2017, to the General Revenue Fund, instead of to the
funds otherwise mandated in this subdivision, in article two-
d, chapter twenty-three of this code or in any other provision
of this code, until certification of the Governor to the
Legislature that an independent actuary has determined that
the unfunded liability of the Old Fund, as defined in chapter
twenty-three of this code, has been paid or provided for in
its entirety: Provided further, That, notwithstanding any
provision of this subdivision or any other provision of this
code to the contrary, the Governor may, by Executive
Order, redirect seventy-five percent of the deposits of the
amount collected pursuant to this subdivision, for any
period commencing after June 30, 2017, and ending before
July 1, 2018, to the General Revenue Fund, instead of to the
funds otherwise mandated in this subdivision, in article two-
d, chapter twenty-three of this code or in any other provision
of this code, until certification of the Governor to the
Legislature that an independent actuary has determined that
the unfunded liability of the Old Fund, as defined in chapter
twenty-three of this code, has been paid or provided for in
its entirety.

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

(g) The new premiums surcharge imposed by
paragraphs (A) and (B), subdivision (3), subsection (f) of
this section sunset and are not collectible with respect to
workers’ compensation insurance premiums paid when the
policy is renewed on or after the first day of the month following the month in which the Governor certifies to the Legislature that the revenue bonds issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of the Old Fund has been paid or has been 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.

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

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

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

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

(3) Subdivision (1), subsection (g), section ten-d of this article;
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. 20 – Division of Finance
5. (WV Code Chapter 5A)
6. Fund 0203 FY 2017 Org 0209
7.  
8. **General**
9. **Appropriation**
10. **Revenue**
11. **Fund**
12. 
13. 8a Enterprise Resource Planning System – Surplus................. 87200 $ 3,300,000
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

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.

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that business and industrial development loan programs provide for economic growth and stimulation within the state; that loans from pools established in the Consolidated Fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the Board and West Virginia Economic Development Authority Board. The Legislature further finds and declares that an investment in the West Virginia Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will assist in creating jobs and businesses within the state and provide the needed risk capital to assist business and industrial development. This section is enacted in view of these findings.
(b) The West Virginia Board of Treasury Investments shall make available, subject to a liquidity determination, in the form of a revolving loan, up to $175 million from the Consolidated Fund to loan the West Virginia Economic Development Authority for business or industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to section twenty, article fifteen, chapter thirty-one of this code which authorizes a $175 million revolving loan and article eighteen-b of said chapter which authorizes a $50 million investment pool: Provided, That the West Virginia Economic Development Authority may not loan more than $15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to the twelve-month average of the board’s yield on its cash liquidity pool. The rate shall be set on July 1 and adjusted annually on the same date. The maximum annual adjustment may not exceed one percent. Monthly payments made by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia Economic Development Authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

(c) The outstanding principal balance of the revolving loan from the board to the West Virginia Economic Development Authority may at no time exceed one hundred three percent of the aggregate outstanding principal balance of the business and industrial loans from the West Virginia Economic Development Authority to economic development projects funded from this revolving loan pool. The independent audit of the West Virginia Economic
Development Authority financial records shall annually certify that one hundred three percent requirement.

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

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

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

(g) Subject to cash availability, the board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, a nonrecourse loan in an amount up to $25 million, for the purpose of the West Virginia Economic Development Authority making a loan or loans from time to time to the West Virginia Enterprise Advancement Corporation, an affiliated nonprofit corporation of the West Virginia Economic Development Authority. The respective loans authorized by this subsection by the board to the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation shall each be evidenced by one note and shall each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation
pursuant to this subsection shall be invested by the West Virginia Enterprise Corporation in the West Virginia Enterprise Capital Fund, LLC, the manager of which is the West Virginia Enterprise Advancement Corporation. The loan to West Virginia Economic Development Authority authorized by this subsection shall be nonrevolving, and advances under the loan shall be made at times and in amounts requested or directed by the West Virginia Economic Development Authority, upon reasonable notice to the board. The loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the $15 million limitation for any one business or industrial development project and limitation of one hundred three percent of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia Economic Development Authority shall be classified by the board as a long-term fixed income investment, shall bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, and the principal of which shall be repaid no later than June 30, 2022, in annual installments due on or before June 30 of each year. The annual installments, which need not be equal shall commence no later than June 30, 2005, in annual principal amounts agreed upon between the board and the West Virginia Economic Development Authority. The loan authorized by this subsection shall be nonrecourse and shall be payable by the West Virginia Economic Development Authority solely from amounts or returns received by the West Virginia Economic Development Authority in respect of the loan authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by
this subsection. Any and all loans from the West Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, shall be nonrecourse and shall be payable by the West Virginia Enterprise Advancement Corporation solely from amounts of returns received by the West Virginia Enterprise Advancement Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which that board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. In the event the amounts or returns received by the West Virginia Enterprise Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the West Virginia Economic Development Authority, the principal or interest, or both, as the case may be, due on the loan made to the West Virginia Economic Development Authority pursuant to this subsection shall be deferred and any and all past due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments in the West Virginia Enterprise Capital Fund, LLC. The directors or the board shall bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity determination and cash availability, the board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan, $50 million, for the purpose of insuring the payment
or repayment of all or any part of the principal, the redemption or prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, as authorized and as set forth in section eight, article fifteen, chapter thirty-one of this code, but only for the purpose of providing insurance on such debt instruments relating solely to the deployment of broadband under said section: *Provided,* That the West Virginia Economic Development Authority may not insure more than $10 million for any one enterprise, public body or authority of the state in any single calendar year. The loan authorized by this subsection may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection shall be classified by the board as a long-term fixed income investment, and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the twelve-month average of the board’s yield on its cash liquidity pool. The rate shall be set on July 1, 2017, and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall make a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The loan authorized by this subsection is nonrecourse and is payable by the West Virginia Economic Development Authority solely from moneys received by the West Virginia Economic Development Authority in respect to insured debt instruments relating to providing broadband service under section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said insured debt instruments, the West Virginia Economic Development Authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia Economic Development Authority shall determine the outstanding
The loan is hereby secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority respecting debt instruments relating to the deployment of broadband under said section. In the event moneys received by the West Virginia Economic Development Authority respecting any individual insured debt instrument relating to providing broadband service under said section is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the authority, the principal or interest, or both, as the case may be, due on the loan made to the authority pursuant to this subsection shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt instruments. The directors of the board bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.


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

(1) Moneys appropriated by the state to the insurance fund;
(2) Premiums, fees and any other amounts received by the authority with respect to financial assistance provided by the authority from the insurance fund;

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

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

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

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

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

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

(1) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on bonds or notes
whether issued under this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article thirty-three, chapter eight of this code;

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

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

(4) To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, letters of credit or other credit support from any person or financial institution in connection with financial assistance provided by the authority under this section;
(5) To pay any and all expenses of the authority, including, but not limited to:

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

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

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

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

(ii) Building a segment of a telecommunications network that links a network operator’s core network to a local network plant that serves either an unserved area, as defined in section two, article one, chapter thirty-one-g of
this code, or an area in which no more than two wireline providers are operating.

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

Upon the filing of an application for loan insurance under this subsection, the broadband provider shall cause to be published as a Class II legal advertisement in compliance with article three, chapter fifty-nine of this code, notice of the filing of the application and that the authority may approve the same unless within ten business days after completion of publication a written objection is received by the authority from a person or persons challenging that the proposed broadband project does not satisfy the provisions of this subsection. The publication area for such notice is to be the county or counties in which any portion of the proposed broadband project is to be constructed. The notice shall be in such form as the authority shall direct, and shall include a map of the area or areas to be served by the proposed broadband project. The applicant shall also cause to be mailed by first class, on or before the first day of publication of the notice, a copy of the notice to all known current providers of broadband service within the area proposed to be served. If a challenge under this paragraph is timely received by the authority, the authority shall advise the Broadband Enhancement Council, established in article one of chapter thirty-one-g of this code, in writing within five business days. The council shall set the matter for hearing on a date within thirty days of receipt of notice from
the authority. The Broadband Enhancement Council shall issue a decision on whether the proposed project satisfies the requirements of this subsection or not within thirty days of completion of such hearing. Any party participating in said hearing may appeal the council’s decision within thirty days of the issuance of said decision to the Circuit Court of Kanawha County. This provision shall apply to all applicants except to those broadband providers that plan on providing a downstream data rate of at least one gigabyte per second to the end user.

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

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

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

(f) The authority may itself approve the form of any insurance agreement entered into under this section or may authorize the chairman or his or her designee to approve the form of any such agreement. Any payment by the authority
under an agreement entered into by the authority under this section shall be made at the time and in the manner that the authority, in its sole and absolute discretion, determines.

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

The Legislature finds as follows:

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

(2) That although broadband access has been extended to many of West Virginia’s cities, towns, and other concentrated population areas, some areas of the state, mostly rural, remain unserved.
(3) That the issues which have hindered the provision of broadband access to rural areas of the state especially disadvantage the elderly and low-income households.

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

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

§31G-1-2. Definitions.

For the purposes of this article:

(1) “Broadband” or “broadband service” means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection, that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates,
with latency suitable for real-time applications and services such as voice-over Internet protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: Provided, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within sixty days of the federal update.

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

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

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

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

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

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

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

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

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

1. The Secretary of Commerce or his or her designee;
2. The Chief Technology Officer or his or her designee;
3. The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;
4. The State Superintendent of Schools or his or her designee; and
5. Nine public members that shall serve three year terms from the date of their appointment and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing users of large amounts of broadband services in this state;
(ii) One member from each congressional district representing rural business users in this state;
(iii) One member from each congressional district representing rural residential users in this state;
(iv) One member representing urban business users in this state; and

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

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

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

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

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

(g) The gubernatorial appointed members shall be deemed part-time public officials, and may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in or otherwise associated with a broadband deployment project, project sponsor or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited
under section five, article two, chapter six-b of this code and
is not subject to prosecution for violation of said section
when the violation is created solely as a result of his or her
relationship with the broadband deployment project, project
sponsor or project participant so long as the member recuses
himself or herself from board participation regarding the
conflicting issue in the manner set forth in section five,
article two, chapter six-b of this code and the legislative
rules promulgated by the West Virginia Ethics Commission.

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

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

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

(a) The council shall:

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

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

(3) Explore the potential for increased use of broadband
service for the purposes of education, career readiness,
workforce preparation and alternative career training;
(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

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

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

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

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

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

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

(5) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;
(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties;

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

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

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

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

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

All moneys collected by the council, which may, in addition to appropriations, include gifts, bequests or donations, shall be deposited in a special revenue account in the State Treasury known as the Broadband Enhancement Fund. The fund shall be administered by and under the control of the Secretary of the Department of Commerce. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.
§31G-1-6. Mapping of areas within state.

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

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

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

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

(e) The mapping and designations provided for under this section may be revised on a continuing basis by the council as warranted by the data and information provided.
(f) In addition to the provisions of section thirteen of this article, the mapping of broadband services may exclude from public accessibility and availability: (1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services; (2) personal name and personal IP addresses connected with particular data rates; and (3) information designated as confidential for public security reasons by either state or federal homeland security agencies: Provided, That it shall be duty of the public and private entities to make the council aware of such confidential designation: Provided, however, That unless the council determines good cause exists, the actual or estimated upstream and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

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

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

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


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

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

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

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

1. Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person’s physical address;

2. Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

3. Not include any person’s personal web history or search information, or otherwise publicly identify the person’s name in connection with an IP address or physical address.

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


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

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

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

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

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

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

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

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


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

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

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the council is the Secretary of Administration, who is authorized to establish and administer appropriate security measures. The council chair shall designate two additional persons to share the
responsibility of securing trade secrets or proprietary information. No person will be allowed access to trade secrets or proprietary information without written approval of a minimum of two of the three authorized persons specified above.

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

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

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

As used in this article:

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

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

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

(4) “Qualified person” means a person who is engaged in the use of internet services, either in an individual capacity or as a business.
§31G-2-2. Who may organize.

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

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

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

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

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

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


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

(1) To engage in any qualified activity in connection with any internet service; or any activity in connection with the purchase, providing or use by its members of internet services; or in the financing, directly, through the association of any qualified activities. All transactions with nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise participate in any benefits derived from such transactions;
(2) To borrow money without limitation as to amount of corporate indebtedness or liability, and to make advance payments and advances to members; to execute, issue, draw, make, accept, endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants, certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any kind; to become the surety, guarantor, maker, and/or endorser for accommodation or otherwise of bills, notes, securities and other evidences of debt of any association or person, anything in any other statutes or law of this state to the contrary notwithstanding;

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

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

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

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

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

(8) To do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated, or conducive to or not contrary to the interest
or benefit of the association; and to contract accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the purposes of this article.

§31G-2-5. Members.

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

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

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

§31G-2-6. Articles of incorporation.

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

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

(2) The purposes for which it is formed;

(3) The place where its principal business will be transacted;
(4) The period, if any prescribed, for the duration of the
   corporation;

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

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

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

(8) If the association is authorized to issue more than
one class of stock, the total number of shares of all classes
of stock which the association may issue, including: (A) The
number of shares of each class that have a par value and the
par value of each share by class; (B) the number of shares
that are to be without par value; and (C) a statement of the
powers, preferences, rights, qualifications, limitations or
restrictions that are permitted by section thirteen of this
article in respect to a class of stock fixed by the articles of
incorporation or by resolution of the board of directors;
(9) The articles shall be signed and filed in accordance with the provisions of the business or nonprofit corporation laws of this state; and

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

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

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


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

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

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

(3) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effect of such votes;
(4) The number of directors constituting a quorum; and, if authority therefor is given in the articles of incorporation, the total number of directors;

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

(6) Penalties for violation of the bylaws;

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

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

(9) The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the conditions upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he or she ceases to be eligible to membership in the association; the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member’s interest, and provision for its purchase by the association, at its option, upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture
of his or her membership, or, at the option of the association, 
the purchase at a price fixed by conclusive appraisal by the 
board of directors, or at the election of the board, such 
property interests may be sold at public auction to the 
association itself, or to any person eligible to membership 
in such association and the proceeds of such sale paid over 
to the personal representative of such deceased member, or 
to the member withdrawing or expelled, as the case may be.


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

§31G-2-10. Directors.

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

(b) The bylaws may provide that the territory in which 
the association has members shall be divided into districts 
and that the directors be elected either directly or by district 
delegates elected by the members in that district. The 
bylaws shall specify the number of directors to be elected 
by each district, the manner of reapportioning the directors
and the method of redistricting the territory covered by the
association. The bylaws may provide that primary elections
shall be held in each district to elect the directors
apportioned to the districts and that the results of all the
primary elections may be ratified during the next regular
meeting of the association or may be considered final.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Other kinds and classes of stock may be issued in compliance with the provisions of the articles of incorporation, the terms of the bylaws, or special resolutions of the board of directors.
(g) The association may, at any time, as specified in the bylaws, except when the debts of the association exceed fifty percent of the assets thereof, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors, and pay for it in cash within one year thereafter.


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

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


Upon demand of one third of the entire board of directors, made immediately and so recorded, at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular
meeting; and a special meeting may be called for the purpose.


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


The bylaws or the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him or her of any provision of the marketing contract regarding the sale or delivery or withholding of internet services, and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case the association shall prevail in any action brought by it upon the contract; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.
In the event of any such breach or threatened breach of 
such marketing contract by a member, the association shall 
be entitled to an injunction to prevent the further breach of 
the contract and to a decree of specific performance thereof. 
Pending the adjudication of such an action and upon filing 
a verified complaint showing the breach or threatened 
breach, and upon filing a sufficient bond, the association 
may be entitled to a temporary restraining order and 
preliminary injunction against the member.

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

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

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


Each association formed under this article shall prepare 
an annual report on forms provided by and filed with the
3 Secretary of State pursuant to the requirements of section
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
associations, which could be made by any association incorporated hereunder, shall be legal and valid and enforceable in this state with all of the remedies set forth in this article.

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

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

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

Any person who solicits, persuades or permits any member of any association organized hereunder to breach his or her marketing contract with the association or one association with another, by accepting or receiving such member’s products for sale or for auction or for display for
sale, contrary to the terms of any marketing agreement of
which such person has knowledge or notice, shall be liable
to the association aggrieved in a civil suit for damages
therefor. Courts of equity shall have jurisdiction to enjoin
further breaches of such contract.

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

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

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

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

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-1. Definitions.

“Microtrenching” means a technique of deploying
cables, including specifically for broadband networks, using
a cutting wheel to cut a trench with smaller dimensions than
can be achieved with conventional trench digging
equipment; with the trench dimensions being no greater
than three inches in width, and a depth between one and two
feet.
§31G-3-2. Microtrenching permitted; notification.

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

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

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

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

(1) Proof of insurance; or

(2) An indemnification agreement.

(e) Promptly after completion of microtrenching construction, but no longer than forty calendar days after issuance of the permit for microtrenching, the entity must
file a document with the appropriate permitting entity containing the following information:

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

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

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

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

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

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

(A) Proof of insurance; or

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

(3) “Make Ready Costs” means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an Attacher include, without limitation, all
costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher’s attachment.

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

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

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

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

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

(c) Within thirty days of the completion of any relocation or alteration, an Attacher shall send notice of the move and as-built reports to the Pre-Existing Third Party
User and the owner of all poles or other structures on which such relocations or alterations were made. The as-built reports shall include a unique field label identifier, and an address or coordinates.

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

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

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

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

(f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User’s facilities pursuant to this section, an Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates, each being deemed an Indemnitee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the
same, payment of any settlement or judgment therefor and reasonable attorney’s fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

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

§31G-4-3. Exceptions.

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

(1) Facilities located above the “Communication Worker Safety Zone” as such term is defined in the National Electrical Safety Code; or

(2) Any electric supply facilities wherever located.

(b) This article does not authorize any activity requiring 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.

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

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

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

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

(d) The words “preceding”, “succeeding” or
“following” used in reference to any section or sections of
a chapter or statute, mean next preceding, next succeeding
or next following that in which the reference is made, unless
a different interpretation be required by the context;

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

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

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

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

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

(j) The words “personal representative” include the
executor of a will, the administrator of the estate of a
deceased person, the administrator of such estate with the
will annexed, the administrator de bonis non of such estate,
whether there be a will or not, the sheriff or other officer
lawfully charged with the administration of the estate of a
deceased person, and every other curator or committee of a
decedent’s estate for or against whom suits may be brought for causes of action which accrued to or against such decedent;

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

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

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

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

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

(p) The word “land” or “lands” and the words “real estate” or “real property” include lands, tenements and hereditaments, all rights thereto and interests therein except chattel interests;

(q) The words “personal estate” or “personal property” include goods, chattels, real and personal, money, credits, investments and the evidences thereof;

(r) The word “property” or “estate” embraces both real and personal estate;

(s) The word “offense” includes every act or omission for which a fine, forfeiture or punishment is imposed by law;
(t) The expression “laws of the state” includes the Constitution of West Virginia and the Constitution of the United States, and treaties and laws made in pursuance thereof;

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

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

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

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

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

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

(aa) The words “infant” and “minor” mean persons under the age of eighteen years as used in this code or in rules promulgated by the Supreme Court of Appeals;

(bb) A statute is presumed to be prospective in its operation unless expressly made retrospective;

(cc) Unless there is a provision in a section, article or chapter of this code specifying that its provisions are not severable, the provisions of every section, article or chapter of this code, whether enacted before or subsequent to the effective date of this subdivision, are severable so that if any provision of any section, article or chapter is held to be unconstitutional or void, the remaining provisions of the section, article or chapter remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent: Provided, That if any section, article or chapter of this code has its own severability clause, then that severability clause governs and controls with respect to that section, article or chapter in lieu of the provisions of this subdivision. The provisions of this subdivision are fully applicable to all future amendments or additions to this code, with like effect as if the provisions of this subdivision were set forth in extenso in every amendment or addition and were reenacted as a part thereof, unless the amendment or addition contains its own severability clause;

(dd) A reference to any section, article or chapter of this code applies to all reenactments, revisions or amendments thereof;
(ee) If a statute refers to a series of numbers or letters, the first and the last numbers or letters in the series are considered to be included;

(ff) The words “board of regents”, wherever they appear in the code, mean the Higher Education Policy Commission created in article one-b, chapter eighteen-b of this code or the West Virginia Council for Community and Technical College Education created in article two-b of said chapter unless the term is used in relation to activities conducted solely by an institution or institutions governed by article two-a of said chapter in which case it only means the board of governors of the specific institution or institutions; and

(gg) No legislative enactment of a regulatory, noncriminal nature may be construed to prohibit a lawful business or business structure in existence and operating in this state prior to the effective date of the enactment of legislation prohibiting the operation of such business or business structure absent an express legislative declaration in the enactment that the existing business or business structure is prohibited from continuing after the effective 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.

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

“Abandonment” means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

“Abused child” means:

(1) A child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

*NOTE: This section was also amended by H. B. 2318 (Chapter 129), which passed prior to this act.
(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

(2) A child conceived as a result of sexual assault, as that term is defined in this section, or as a result of the violation of a criminal law of another jurisdiction which has the same essential elements: Provided, That no victim of sexual assault may be determined to be an abusive parent, as that term is defined in this section, based upon being a victim of sexual assault.

“Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

“Battered parent”, for the purposes of part six, article four of this chapter, means a respondent parent, guardian or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

“Child abuse and neglect services” means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;
(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families, or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

“Condition requiring emergency medical treatment” means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

“Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;
(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian;

(H) The parent, guardian or custodian’s abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child’s health or safety; or

(I) Any other condition that threatens the health, life or safety of any child in the home.

“Neglected child” means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child’s parent or custodian;

(C) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

“Petitioner or copetitioner” means the department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.
“Permanency plan” means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

“Respondent” means all parents, guardians and custodians identified in the child abuse and neglect petition who are not petitioners or copetitioners.

“Sexual abuse” means:

(A) Sexual intercourse, sexual intrusion, sexual contact or conduct proscribed by section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact that for a child who is less than sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;

(B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in section seven, eight or nine, article eight-b, chapter sixty-one of this code.

“Sexual assault” means any of the offenses proscribed in section three, four or five, article eight-b, chapter sixty-one of this code.

“Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual exploitation” means an act where:
(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows that the display is likely to be observed by others who would be affronted or alarmed.

“Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

CHAPTER 25

(Com. Sub. for S. B. 456 - By Senators Trump, Weld, Miller and Gaunch)

[Passed April 1, 2017; in effect from passage.]
[Approved by the Governor on April 11, 2017.]
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.

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

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

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

(3) If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her children, another child in the household, or the other parent of his or her children; has attempted or conspired to commit murder or voluntary manslaughter or has been an accessory before or after the fact of either crime; has committed unlawful or malicious wounding resulting in serious bodily injury to the child or to another of his or her children, another child in the household or to the other parent of his or her children; has committed sexual assault or sexual abuse of the child, the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or
permanent custody of the parent; or the parental rights of
the parent to another child have been terminated
involuntarily.

(b) The department may determine not to file a petition
to terminate parental rights when:

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

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

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

CHAPTER 26

(Com. Sub. for H. B. 2805 - By Delegates Nelson,
Boggs, Ambler, Anderson, Frich, Hamilton, C.
Miller, Walters, Longstreth, Pethel and
Sponaugle)

[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.

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

(a) Claims against the Department of Administration, Office of Technology:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Pomeroy IT Solutions Sales Company Inc ........................................... $13,292.33

(2) RICOH USA ................................................ $40,763.04

(3) Verizon Business ........................................ $399,900.00

(4) WEX Bank ..................................................... $1,704.36

(b) Claims against the Division of Corrections:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Robert Cummings .................................................$7.00
(2) Miguel Delgado..................................................$200.95
(3) Mark Gillman ....................................................$480.00
(4) Donald Good .......................................................$25.00
(5) Elliott Gwynn ......................................................$71.00
(6) Smitty Harding ..................................................$918.85
(7) Warren Hester ...................................................$64.21
(8) Robert B. Joseph ...............................................$116.00
(9) Adrian F. King Jr ...............................................$22.89
(10) Norment Security Group Inc. ...................$308,986.73
(11) Harry M. Phillips .............................................$133.28
(12) Harry Reynolds ................................................$146.00
(13) Barry Glen Thompson ........................................$800.00
(14) Max J. Woodson ................................................$69.97
(15) Edwin L. Wright II ..............................................$4.72

(c) Claims against the Division of Highways:

(1) Christy Adams ...................................................$660.86
(2) Frederick Steve Adams ........................................$651.91
(3) Leon E. Adams Jr ...............................................$6,000.00
(4) Janet Ferguson and Marie Adkins ..............$293.50
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Susan Knauss ................................................................................ $296.80
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Prudence Kollar ............................................................................. $185.50
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Alexander Koutsunis and Sandra Koutsunis ................................ $89.95
Carol Koval/ Koval Rentals ......................................................... $991.22
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Joseph H. Kuzma ........................................................................... $231.61
Joshua Craig Laker and Melissa Laker ......................................... $180.20
Richard W. Lalonde and Janet White Lalonde ................................ $720.50
Amy B. Lambert and David Lambert ........................................... $485.00
John Lancaster .............................................................................. $189.50
Crystal Lane and Wesley Lane ...................................................... $538.25
Jayson M. Laroche ........................................................................ $30,000.00
Lavalette Carpet Center Inc. and Chandra Tomblin ....................... $250.00
Robert B. Lawrence and Martha Jane Lawrence ........................... $193.88
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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
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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
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526      Pamela R. McCulloch .................................... $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
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532      April Dawn McFerrin ..................................... $500.00
533  (444) Tara McGregor ............................................ $356.02
534  (445) Wesley E. McIntyre and
535      Michelle McIntyre .......................................... $299.98
Holly B. McKinley ........................................ $500.00
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Richard E. Meadows ...................................... $226.68
Nimish Mehta ............................................. $1,000.00
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Justin Michael ............................................. $476.79
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572  (478)  Tammy N. Muffley and Tim Muffley .......... $449.07
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574  (480)  Gabbielle K. Mullins ............................. $82.68
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576  (482)  William H. Murray ............................... $319.42
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579  (484)  Lawrence H. Myers Jr. and
580       Brenda L. Myers ..................................... $8,611.34
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<td>Ruth Morris and Randy Wilson</td>
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<td>701</td>
<td>Amy Sue Wolfe</td>
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(702) Sarah Wood and Nathan Wood ..................... $582.45
(703) Richard Woods .............................................. $250.00
(704) Justin Woody .............................................. $2,089.47
(705) Linda S. Woody ............................................ $250.00
(706) Misti Judd and Shante` Wright ..................... $209.88
(707) Shelly D. Wright ........................................ $1,535.40
(708) Mark Wrisborne and Vena Wrisborne .......... $250.00
(709) Johnny Wriston ........................................ $500.00
(710) Lorie Wyant .................................................. $500.00
(711) Amber Lea Wyrick ........................................ $136.96
(712) Charles Yeager and Margaret Yeager .......... $2,442.22

(d) Claim against the Division of Rehabilitation Services:
(TO BE PAID FROM GENERAL REVENUE FUND)
Russell Nesbitt Services, Inc. ......................... $9,586.79

(e) Claim against the Division of Labor:
(TO BE PAID FROM GENERAL REVENUE FUND)
Unifirst Corporation ........................................ $34.41

(f) Claims against the Division of Motor Vehicles
(TO BE PAID FROM STATE ROAD FUND)
(1) Rhonda Odell ................................................. $120.00
(2) Jeffrey A. and Ginny A. Poe ............................. $919.75

(g) Claims against the Regional Jail Authority:
(TO BE PAID FROM SPECIAL REVENUE FUND)
(1) Billy Ray Ayers Jr. ............................................ $200.00
(2) Lois Baker, POA for Denver Baker ............... $60.07
(3) James Timothy Cobb ................................. $75.00
(4) David Farias .............................................. $342.00
(5) Irvin J. Baker and Kelli M. Fordyce ............. $591.73
(6) Susan Gandy ............................................. $1,055.00
(7) Arron D. Hudgins ....................................... $400.00
(8) Robert W. Moats ........................................ $200.00
(9) Drew Nutter ............................................... $100.00
(10) Joshua Charles Storey ............................... $50.00

(h) Claims against the Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Ressie Thomas Phillips, Jim Phillips and Summer Mullens ....................... $2,124.66
(2) NTT Data Inc. ......................................... $236,233.00
(3) Cecil I. Walker Machinery Company .......... $14,000.00

(i) Claims against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Arkadin Inc. ........................................... $7,541.57
(2) CIMCO Inc. ............................................ $30,261.69
(3) Michael Andrew Milam, dba Nighthawk Security ....................... $12,560.00
The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Court of Claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Court of Claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 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.

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

(a) Claims against the Department of Health and Human Resources:

<table>
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<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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<tr>
<td>(1) Cunningham-Parker-Johnson</td>
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<td>Funeral Home Inc........................$7,000.00</td>
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<td>(2) Fogelsong-Casto Funeral Home</td>
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<tr>
<td>............................................$1,250.00</td>
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<td>(3) Heritage Cremation Provider</td>
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<td>(4) Honaker Funeral Home Inc.</td>
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<td>(5) Johnson Tiller Funeral Home</td>
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<td>............................................$5,000.00</td>
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<tr>
<td>(6) Melton Mortuary Inc.</td>
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<td>............................................$22,500.00</td>
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<tr>
<td>(7) Tankersly Funeral Home</td>
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<td>............................................$1,250.00</td>
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(b) Claim against the Division of Juvenile Services:

(WV DHHR, Bureau for Medical Services ... $265,005.24

(c) Claim against the Division of Motor Vehicles:

(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.

The purpose of this article is to provide for a timely and efficient mechanism for the offset of delinquent debt owed the state from payments made by the state.

§14-1A-2. Definitions.

For purposes of this article, the term:

“Auditor” means the State Auditor;

“Debt” means the obligations, other than income tax obligations or local government obligations, owed to the state which a spending unit has not been able to collect within a minimum of one hundred eighty days of the date on which the obligation was created;

“Division” means the Debt Resolution Services Division, created by this article;

“Offset” means the capture and diversion of a payment due to a vendor, contractor or taxpayer from the state to satisfy an outstanding obligation owed by them to the state; and

“United States Treasury Offset Program” means the reciprocal debt collection offset program between the federal government and the State of West Virginia authorized by section thirty-seven, article one of this chapter.

§14-1A-3. Division Established.

(a) The Auditor may establish a “Debt Resolution Services Division” to be administered by the employees of
his or her office, which may identify and offset state payments due to vendors, contractors, or taxpayers that owe delinquent debts to the state.

(b) The division may also administer the United States Treasury Offset Program established pursuant to section thirty-seven, article one, of this chapter, except for the portion of the program set forth in subdivision (2), subsection (j), section eleven, article ten, chapter eleven of this code, that is administered by the State Tax Commissioner: Provided, That an offset exercised against a vendor, contractor, or taxpayer pursuant to the United States Treasury Offset Program shall be made subsequent to any offset authorized pursuant to subsection (a) of this section.

(c) The division shall adopt such procedures, forms, and agreements as the Auditor considers necessary to effectuate the purposes of this article. All spending units of the state, except for the State Tax Commissioner and any other entity otherwise exempted by law, may refer delinquent debt to the division for consideration for offset and shall certify to the Auditor that all applicable due process requirements have been met. All spending units, upon request by the Auditor, shall provide the division with information related to debts owed to the state, unless such disclosure is prohibited by law. The Auditor is not required to accept the transfer of any debt from any spending unit which the Auditor finds is not qualified for offset.

(d) The Auditor shall deposit any moneys offset pursuant to this article to the account or fund of the spending unit to which the debt, if otherwise paid, would be 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.]

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:


ARTICLE 2. CLAIMS AGAINST THE STATE.


1. For the purpose of this article:

2. “Commission” means the West Virginia Legislative Claims Commission established by section four of this article.

3. “Claim” means a claim authorized to be heard by the commission in accordance with this article.

4. “Approved claim” means a claim found by the commission to be one that should be paid under the provisions of this article.

5. “Award” means the amount recommended by the commission to be paid in satisfaction of an approved claim.

6. “Clerk” means the clerk of the West Virginia Legislative Claims Commission.
“State agency” means a state department, board, commission, institution, or other administrative agency of state government: Provided, That a “state agency” shall not be considered to include county commissions, county boards of education, municipalities, or any other political or local subdivision of the state regardless of any state aid that 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.

The “Court of Claims” is hereby renamed the West Virginia Legislative Claims Commission. It shall consist of three commissioners, to be appointed by the President of the Senate and the Speaker of the House of Delegates, one of whom shall be appointed presiding commissioner. The judges of the Court of Claims sitting on the effective date of the amendments to this article enacted during the 2017 Regular Session of the Legislature will continue their existing terms as commissioners. Each appointment to the commission shall be made from a list of three qualified nominees furnished by the Board of Governors of the West Virginia State Bar. The President of the Senate and the Speaker of the House of Delegates may jointly terminate the appointment of any commissioner appointed under this section at any time.

The terms of the commissioners shall be six years. Not more than two of the commissioners shall be of the same political party. An appointment to fill a vacancy shall be for the unexpired term.

§14-2-4a. Interim commissioners.

(a) If at any time two or more of the commissioners appointed under section four of this article are temporarily unable, due to illness or other incapacity, to perform their responsibilities the President of the Senate and the Speaker of the House of Delegates may appoint one or two interim
commissioners to serve under the conditions specified in this section.

(b) Appointments made under this section are temporary. An interim commissioner serves under this section until the commissioner for whom the interim commissioner is temporarily replacing can resume his or her duties. In no event may the interim commissioner serve for more than three months unless reappointed.

(c) Appointments made under this section shall be made from a list furnished to the President of the Senate and the Speaker of the House of Delegates by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall annually, on or before January 15, submit a list of twenty qualified nominees.

(d) An interim commissioner:

1. Is entitled to the same compensation and expense reimbursement a commissioner is entitled to under the provisions of section eight of this article;

2. Shall take the oath of office as required in section nine of this article;

3. Has all the authority given to a commissioner under this article; and

4. Is required to possess the qualifications required of a commissioner in section ten of this article.

(e) The President of the Senate and the Speaker of the House of Delegates may jointly terminate the appointment of any interim commissioner appointed under this section at any time.

§14-2-5. Commission clerk and other personnel.

The President of the Senate and the Speaker of the House of Delegates may appoint a clerk, chief deputy clerk
and deputy clerks. The salaries of the clerk, the chief deputy clerk and the deputy clerks shall be fixed by the Joint Committee on Government and Finance, and shall be paid out of the regular appropriation for the commission. The clerk shall have custody of and maintain all records and proceedings of the commission, shall attend meetings and hearings of the commission, shall administer oaths and affirmations and shall issue all official summonses, subpoenas, orders, statements and awards. The chief deputy clerk or another deputy clerk shall act in the place and stead of the clerk in the clerk’s absence.

The President of the Senate and the Speaker of the House of Delegates may employ other persons whose services are necessary to the orderly transaction of the business of the commission and fix their compensation.

§14-2-7. Meeting place of the commission.

The regular meeting place of the commission shall be at the State Capitol, and the Joint Committee on Government and Finance shall provide adequate quarters therefor. In order to facilitate the full hearing of claims arising elsewhere in the state, the commission may convene at any county seat or other location in the state, including a correctional institution: Provided, That the commission will make reasonable efforts to meet in appropriate public or private buildings in keeping with the dignity and decorum of the State.

§14-2-8. Compensation of commissioners; expenses.

Each commissioner shall receive $210 for each day actually served and expenses incurred in the performance of his or her duties paid at the same per diem rate as members of the Legislature: Provided, That the presiding commissioner shall receive an additional $50 for each day actually served. In addition to the expense per diem, each commissioner may, when using his or her own vehicle, be reimbursed for mileage. The number of days served by each
commissioner shall not exceed one hundred twenty in any fiscal year, except by authority of the President of the Senate and the Speaker of the House of Delegates: Provided, That in computing the number of days served, days utilized solely for the exercise of duties assigned to commissioners by this article and the provisions of article two-a of this chapter shall be disregarded. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions and in necessary travel.


Each commissioner shall before entering upon the duties of his or her office, take and subscribe to the oath prescribed by section 5, article IV of the Constitution of the State. The oath shall be filed with the clerk.

§14-2-10. Qualifications of commissioners.

Each commissioner appointed to the West Virginia Legislative Claims Commission shall be an attorney at law, licensed to practice in this state, and shall have been so licensed to practice law for a period of not less than ten years prior to his or her appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his or her capacity as a member of the commission and shall receive no other compensation from the state or any of its political subdivisions. A commissioner shall not hear or participate in the consideration of any claim in which he or she is interested personally, either directly or indirectly.

§14-2-11. Attorney General to represent state.

Unless expressly exempted in the code, the Attorney General shall represent the interests of the State in all claims coming before the commission.

The commission shall, in accordance with this article, consider claims which, but for the Constitutional immunity of the state from suit, or for some statutory restrictions, inhibitions or limitations, could be maintained in the regular courts of the state. No liability shall be imposed upon the state or any state agency by a determination of the commission approving a claim and recommending an award, unless the claim is: (1) Made under an existing appropriation, in accordance with section nineteen of this article; or (2) a claim under a special appropriation, as provided in section twenty of this article. The commission shall consider claims in accordance with the provisions of this article.

Except as is otherwise provided in this article, a claim shall be instituted by the filing of notice with the clerk. In accordance with rules promulgated by the commission, each claim shall be considered by the commission as a whole, or by a commissioner sitting individually, and if, after consideration, the commission finds that a claim is just and proper, it shall so determine and shall file with the clerk a brief statement of its reasons. A claim so filed shall be an approved claim. The commission shall also determine the amount that should be paid to the claimant, and shall itemize this amount as an award, with the reasons therefor, in its statement filed with the clerk. In determining the amount of a claim, interest shall not be allowed unless the claim is based upon a contract which specifically provides for the payment of interest.


The jurisdiction of the commission, except for the claims excluded by section fourteen, shall extend to the following matters:

(1) Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state or any of its agencies, which the state as a sovereign commonwealth
should in equity and good conscience discharge and pay;
and

(2) Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, which may be asserted in the nature of set-off or counterclaim on the part of the state or any state agency.


The jurisdiction of the commission shall not extend to any claim:

1. For loss, damage, or destruction of property or for injury or death incurred by a member of the militia or National Guard when in the service of the state.

2. For a disability or death benefit under chapter twenty-three of this code.

3. For unemployment compensation under chapter twenty-one-a of this code.

4. For relief or public assistance under chapter nine of this code.

5. With respect to which a proceeding may be maintained against the state, by or on behalf of the claimant in the courts of the state.


The commission shall adopt and may from time to time amend rules of procedure, in accordance with the provisions of this article, governing proceedings before the commission. Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. Rules shall permit a claimant to appear in his or her own behalf or be represented by counsel.

Discovery may be used in a case pending before the commission in the same manner that discovery is conducted
pursuant to the Rules of Civil Procedure for trial courts of record, Rules 26 through 36. The commission may compel discovery and impose sanctions for a failure to make discovery, in the same manner as a court is authorized to do under the provisions of Rule 37 of the Rules of Civil Procedure for trial courts of record: Provided, That the commission shall not find a person in contempt for failure to comply with an order compelling discovery.

The commission, upon its own motion or upon motion of a party, may strike a pleading, motion or other paper which: (1) Is not well-grounded in fact; (2) is not warranted by existing law, or is not based on a good faith argument for the extension, modification, or reversal of existing law; or (3) is interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs. An order striking a pleading, motion, or paper may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.

Under its rules, the commission shall not be bound by the usual common law or statutory rules of evidence. The commission may accept and weigh, in accordance with its evidential value, any information that will assist the commission in determining the factual basis of a claim.

§14-2-16. Regular procedure.

The regular procedure for the consideration of claims shall be substantially as follows:

(1) The claimant shall give notice to the clerk that he or she desires to maintain a claim. Notice shall be in writing and shall be in sufficient detail to identify the claimant, the circumstances giving rise to the claim, and the state agency concerned, if any. The claimant shall not otherwise be held to any formal requirement of notice.
(2) The clerk shall transmit a copy of the notice to the state agency concerned. The state agency may deny the claim, or may request a postponement of proceedings to permit negotiations with the claimant. If the commission finds that a claim is prima facie within its jurisdiction, it shall order the claim to be placed upon its regular docket for hearing.

(3) During the period of negotiations and pending hearing, the state agency, represented by the Attorney General, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts an attempt shall be made to stipulate the questions of fact in issue.

(4) The commission shall so conduct the hearing as to disclose all material facts and issues of liability and may examine or cross-examine witnesses. The commission may call witnesses or require evidence not produced by the parties; the commission may call expert witnesses and compensate those experts for their services in an amount not to exceed $3,500 per expert; the commission may stipulate the questions to be argued by the parties; and the commission may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(5) After the close of the hearing the commission shall consider the claim and shall conclude its determination, if possible, within sixty days.

§14-2-17. Shortened procedure.

The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

1. The claim does not arise under an appropriation for the current fiscal year.
2. The state agency concerned concurs in the claim.

3. The amount claimed does not exceed $3,000.

4. The claim has been approved by the Attorney General as one that, in view of the purposes of this article, should be paid.

The state agency concerned shall prepare the record of the claim consisting of all papers, stipulations and evidential documents required by the rules of the commission and file the same with the clerk. The commission shall consider the claim informally upon the record submitted. If the commission determines that the claim should be entered as an approved claim and an award made, it shall so order and shall file its statement with the clerk. If the commission finds that the record is inadequate, or that the claim should not be paid, it shall reject the claim. The rejection of a claim under this section shall not bar its resubmission under the regular procedure.

§14-2-17a. Shortened procedure for road condition claims.

Notwithstanding the regular and shortened procedures provided for in sections sixteen and seventeen of this article, there shall be a shortened procedure for road condition claims. The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

1. The claim does not arise under an appropriation for the current fiscal year.

2. The claim alleges that a condition on the state’s highways or roads caused property damage.

3. The Division of Highways concurs in the claim.

4. The amount claimed does not exceed $1,000.
The Division of Highways shall prepare a stipulation concerning the claim and file it with the clerk. The commission shall order the claim approved and shall file its statement with the clerk.


A claim arising under an appropriation made by the Legislature during the fiscal year to which the appropriation applies, and falling within the jurisdiction of the commission, may be submitted by:

1. A claimant whose claim has been rejected by the state agency concerned or by the State Auditor.

2. The head of the state agency concerned in order to obtain a determination of the matters in issue.

3. The State Auditor in order to obtain a full hearing and consideration of the merits.

When such submittal is made, the clerk shall give a copy of the submittal to the Joint Committee on Government and Finance. If the Joint Committee on Government and Finance shall so direct, the clerk shall place such claim on its docket. Upon its placement on the docket, the regular procedure, so far as applicable, shall govern the consideration of the claim by the commission. If the commission finds that the claimant should be paid, it shall certify the approved claim and award to the head of the appropriate state agency, the State Auditor and to the Governor. The Governor may thereupon instruct the Auditor to issue his or her warrant in payment of the award and to charge the amount thereof to the proper appropriation. The Auditor shall forthwith notify the state agency that the claim has been paid. Such an expenditure shall not be subject to further review by the Auditor upon any matter determined and certified by the commission.

§14-2-20. Claims under special appropriations.
Whenever the Legislature makes an appropriation for the payment of claims against the state, then accrued or arising during the ensuing fiscal year, the determination of claims and the payment thereof may be made in accordance with this section. However, this section shall apply only if the Legislature in making its appropriation specifically so provides and only after specific direction to hear the claim is given by the Joint Committee on Government and Finance.

The claim shall be considered and determined by the regular or shortened procedure, as the case may be, and the amount of the award shall be fixed by the commission. The clerk shall certify each approved claim and award, and requisition relating thereto, to the Auditor. The Auditor thereupon shall issue his or her warrant to the Treasurer in favor of the claimant. The Auditor shall issue his or her warrant without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation.


The commission shall not take jurisdiction of any claim, whether accruing before or after the effective date of this article (July 1, 1967), unless notice of such claim be filed with the clerk within such period of limitation as would be applicable under the pertinent provisions of the Code of West Virginia, 1931, as amended, if the claim were against a private person, firm or corporation and the Constitutional immunity of the state from suit were not involved and such period of limitation may not be waived or extended. The foregoing provision shall not be held to limit or restrict the right of any person, firm or corporation who or which had a claim against the state or any state agency, pending before the Attorney General on the effective date of this article (July 1, 1967), from presenting such claim to the West Virginia Legislative Claims Commission, nor shall it limit or restrict the right to file such a claim which was, on the effective date of this article (July 1, 1967), pending in any
court of record as a legal claim and which, after such date
was or may be adjudicated in such court to be invalid as a
claim against the state because of the Constitutional
immunity of the state from suit.


In all hearings and proceedings before the commission,
the evidence and testimony of witnesses and the production
of documentary evidence may be required. Subpoenas may
be issued by the commission for appearance at any
designated place of hearing. In case of disobedience to a
subpoena or other process, the commission may invoke the
aid of any circuit court in requiring the evidence and
testimony of witnesses, and the production of books, papers
and documents. Upon proper showing, the circuit court shall
issue an order requiring witnesses to appear before the West
Virginia Legislative Claims Commission; produce books,
papers and other evidence; and give testimony touching the
matter in question. A person failing to obey the order may
be punished by the circuit court as for contempt.

§14-2-23. Inclusion of awards in budget.

The clerk shall certify to the department of finance and
administration, on or before November 20, of each year, a
list of all awards recommended by the commission to the
Legislature for appropriation. The clerk may certify
supplementary lists to the Governor to include subsequent
awards made by the commission. The Governor shall
include all awards so certified in his or her proposed budget
bill transmitted to the Legislature. Any other provision of
this article or of law to the contrary notwithstanding, the
clerk shall not certify any award which has been previously
certified.

§14-2-24. Records to be preserved.

The record of each claim considered by the commission,
including all documents, papers, briefs, transcripts of
testimony and other materials, shall be preserved by the
clerk for a period of ten years from the date of entry of the commission’s last order and shall be made available to the Legislature or any committee thereof for the reexamination of the claim. When any such documents, papers, briefs, transcripts and other materials have been so preserved by the clerk for such ten-year period, the same shall be transferred to the state records administrator for preservation or disposition in accordance with the provisions of article eight, chapter five-a of this code without cost, either to the commission or the Legislature.

§14-2-25. Reports of the commission.

The clerk shall be the official reporter of the commission. He or she shall collect and edit the approved claims, awards and statements, shall prepare them for submission to the Legislature in the form of an annual report and shall prepare them for publication.

Claims and awards shall be separately classified as follows:

1. Approved claims and awards not satisfied but referred to the Legislature for final consideration and appropriation.

2. Approved claims and awards satisfied by payments out of regular appropriations.

3. Approved claims and awards satisfied by payment out of a special appropriation made by the Legislature to pay claims arising during the fiscal year.

4. Claims rejected by the commission with the reasons therefor.

The commission may include any other information or recommendations pertaining to the performance of its duties.
The commission shall transmit its annual report to the presiding officer of each house of the Legislature, and a copy shall be made available to any member of the Legislature upon request therefor. The reports of the commission shall be published biennially by the clerk as a public document. The biennial report shall be filed with the clerk of each house of the Legislature, the Governor and the Attorney General.


A person who knowingly and willfully presents or attempts to present a false or fraudulent claim, or a state officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent claim, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of violation of this section shall be fined not more than $1,000 or confined for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her office or position of employment, as the case may be.


Any final determination against the claimant on any claim presented as provided in this article shall forever bar any further claim in the commission arising out of the rejected claim.

§14-2-28. Award as condition precedent to appropriation.

(a) It is the policy of the Legislature to make no appropriation to pay any claims against the state, cognizable by the commission, unless the claim has first been passed upon by the commission.

(b) Because a decision of the commission is a recommendation to the Legislature based upon a finding of moral obligation, and the enactment process of passage of legislation authorizing payments of claims recommended
by the commission is at legislative discretion, no right of appeal exists to findings and award recommendations of the West Virginia Legislative Claims Commission and they are not subject to judicial review.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


Any commissioner of the West Virginia Legislative Claims Commission individually, or the West Virginia Legislative Claims Commission en banc, shall have jurisdiction to approve awards of compensation arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by a preponderance of the evidence that the requirements for an award of compensation have been met.

§14-2A-6. Compensation of commissioners serving under this article.

Compensation of commissioners for services performed under this article, and actual expenses incurred in the performance of duties as commissioners under this article, shall be paid out of the crime victims compensation fund.

§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.

The West Virginia Legislative Claims Commission, with the approval of the President of the Senate and the Speaker of the House of Delegates, is hereby authorized to hire not more than four claim investigators to be employed within the West Virginia Legislative Claims Commission, who shall carry out the functions and duties set forth in section twelve of this article. Claim investigators shall serve at the pleasure of the President of the Senate and the Speaker of the House of Delegates and under the administrative supervision of the clerk of the West Virginia Legislative Claims Commission. The compensation of claim
investigators shall be fixed by the President of the Senate and the Speaker of the House of Delegates, and such compensation, together with travel, clerical and other expenses of the clerk of the West Virginia Legislative Claims Commission relating to a claim investigator carrying out his or her duties under this article, including the cost of obtaining reports required by the investigator in investigating a claim, shall be payable from the crime victims compensation fund as appropriated for such purpose by the Legislature.

The West Virginia Legislative Claims Commission, with the approval of the President of the Senate and the Speaker of the House of Delegates, is hereby authorized to hire as support staff such paralegal or paralegals and secretary or secretaries to be employed within the West Virginia Legislative Claims Commission, necessary to carry out the functions and duties of this article. Such support staff shall serve at the will and pleasure of the West Virginia Legislative Claims Commission and under the administrative supervision of the clerk of the West Virginia Legislative Claims Commission.

§14-2A-10. Filing of application for compensation award; contents.

(a) A claim for an award of compensation shall be commenced by filing an application for an award of compensation with the clerk of the West Virginia Legislative Claims Commission. The application shall be in a form prescribed by the clerk of the West Virginia Legislative Claims Commission and shall contain the information specified in subdivisions (1) through (6) of this subsection and, to the extent possible, the information in subdivisions (7) through (10) of this subsection:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant and the relationship of the claimant to the victim;
(2) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(3) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(4) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(5) A release authorizing the West Virginia Legislative Claims Commission and the claim investigator to obtain any report, document or information that relates to the determination of the claim for an award of compensation;

(6) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(7) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;

(8) The total amount of the economic loss that the victim, a dependent or the claimant sustained or will sustain as a result of the criminally injurious conduct, without regard to the financial limitation set forth in subsection (g), section fourteen of this article;

(9) The amount of benefits or advantages that the victim, a dependent or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;
(10) Any additional relevant information that the West Virginia Legislative Claims Commission may require. The West Virginia Legislative Claims Commission may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) All applications for an award of compensation shall be filed within two years after the occurrence of the criminally injurious conduct that is the basis of the application. Any application so filed which contains the information specified in subdivisions (1) through (6), subsection (a) of this section may not be excluded from consideration on the basis of incomplete information specified in subdivisions (7) through (10) of said subsection if such information is completed after reasonable assistance in the completion thereof is provided under procedures established by the West Virginia Legislative Claims Commission.

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or who knowingly and willfully participates, or assists in the preparation or presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of a violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her office or position of employment, as the case may be.


The clerk of the West Virginia Legislative Claims Commission shall establish a procedure for the filing, recording and processing of applications for an award of compensation.

§14-2A-12. Investigation and recommendations by claim investigator.
(a) The clerk of the West Virginia Legislative Claims Commission shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the West Virginia Legislative Claims Commission, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. He or she shall file with the clerk the finding of fact and recommendation and all information or documents that he or she used in his or her investigation: Provided, That the claim investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(c) The claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of compensation.

The claim investigator, while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him or her with reports, information, witness statements or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him or her to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness statements or
other data relating to the criminally injurious conduct to the
claim investigator.

The claim investigator, while investigating the claim, may obtain autopsy reports including results from the Office of the State Medical Examiner to be used solely for determining eligibility for compensation awards.

Upon motion of any party, court or agency from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data be made available only by a different method than that selected by the claim investigator; (4) that certain matters not be inquired into, or that the scope of the claim investigator’s request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only by certain persons designated by the court; (6) that the reports, information, witness statements or other data, after being sealed, be opened only by order of the court; and (7) that confidential information or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, in any case wherein the claim investigator has reason to believe that his or her investigation may interfere with or jeopardize the investigation of a crime by law-enforcement officers, or the prosecution of a case by prosecuting attorneys, he or she shall apply to the West Virginia Legislative Claims Commission, or a commissioner thereof, for an order granting leave to discontinue his or her investigation for a reasonable time in order to avoid such interference or jeopardization. When it
appears to the satisfaction of the commission, or commissioner, upon application by the claim investigator or in its own discretion, that the investigation of a case by the claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the commission, or commissioner, shall issue an order granting the claim investigator leave to discontinue his or her investigation for such time as the commission, or commissioner, deems reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred and the exact nature of the conduct;

(2) If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or the reasons why the conduct was not reported to a law-enforcement officer or agency; or the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;

(3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

(4) If the claim investigator is recommending that an award be made, a specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;

(5) If the claim investigator is recommending that an award be made, a specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;
Claim investigator's recommendation and decision

§14-2A-13. Notice to claimant of claim investigator’s recommendation; evaluation of claim by commissioner.
(a) The clerk of the West Virginia Legislative Claims Commission, upon receipt of the claim investigator’s finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a commissioner.

(b) The commissioner to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may request the claim investigator to comment in writing on the claimant’s response. The commissioner shall, within forty-five days after assignment by the clerk, evaluate the claim without a hearing and either deny the claim or approve an award of compensation to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

(a) Except as provided in subsection (b), section ten of this article, the commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the claimant did not undergo a forensic medical examination, within ninety-six hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: Provided,
That no reporting to a law-enforcement officer or agency or a forensic medical examination is required if the claimant is a juvenile in order for a commissioner to approve an award of compensation.

(c) The commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation or reconsider a claim already approved.

(e) A commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims Commission. The commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoulement of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant’s economic loss being recouped by the collateral
Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) (1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed $35,000 in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed $50,000 in the aggregate.

(2) In the event the victim’s personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U. S. C. §423, the commission may award an additional amount, not to exceed $100,000, for special needs attributable to the injury.

(h) If an award of compensation of $5,000 or more is made to a minor, a guardian shall be appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the minor’s estate.


(a) If either the claim investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this article, the claim investigator or the claimant, or both, shall file with the clerk a request for hearing. Such request shall be filed within twenty-one days after notification by the commissioner of his or her decision.

(b) Upon receipt of a request for hearing, the clerk shall set a date and time for hearing, shall advise the Attorney General and the claimant of the receipt of the request and
docketing of the claim, and shall request the Attorney General to commence negotiations with the claimant.

(c) During the period of negotiations and pending hearing, the Attorney General, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts, an attempt shall be made to stipulate the questions of fact in issue.

(d) The hearing held in accordance with this section shall be before a single commissioner to whom the claim has not been previously assigned. Hearings before a commissioner may, in the discretion of such hearing officer, be held at such locations throughout the state as will facilitate the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all material facts and issues. The commissioner may examine or cross-examine witnesses. The commissioner may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties; and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(f) After the close of the hearing the commissioner shall consider the claim and shall conclude his or her determination, if possible, within thirty days.

(g) The commission shall adopt and may from time to time amend rules of procedure to govern proceedings before the commission in accordance with the provisions of this article. The rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. The rules shall permit a claimant to appear in his or her own behalf or be represented by counsel and provide for interests of the state to be represented by the Attorney General in any hearing under this section at no additional cost to the fund or the state.
Under its rules, the commission shall not be bound by the usual common law or statutory rules of evidence. The commission may accept and weigh, in accordance with its evidential value, any information that will assist the commission in determining the factual basis of a claim.


(a) There is no privilege, except the privilege arising from the attorney-client relationship, as to communications or records that are relevant to the physical, mental or emotional condition of the claimant or victim in a proceeding under this article in which that condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim for an award of compensation, the commission or a commissioner may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant and the claim investigator. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person who performs the examination or autopsy to file with the clerk of the West Virginia Legislative Claims Commission a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the clerk of the West Virginia Legislative Claims Commission shall furnish him or her a copy of the report. If the victim is deceased, the clerk of the West Virginia Legislative Claims Commission, on request, shall furnish the claimant a copy of the report.
(c) The commission, or a commissioner thereof, may order law-enforcement officers employed by the State or any political subdivision thereof to provide it or the claim investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation.

(d) The commission or a commissioner thereof, may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(e) The commission or a commissioner thereof, or the claim investigator, in a claim arising out of a violation of article eight-b, chapter sixty-one of this code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim’s activity, or reputation evidence of the victim’s sexual activity, unless it involves evidence of the victim’s past sexual activity with the offender, and then only to the extent that the judge, the commissioner or the claim investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the West Virginia Legislative Claims Commission, or a commissioner thereof, or the claim investigator shall have access to the records of juvenile proceedings which bear upon an application for compensation under this article. The West Virginia Legislative Claims Commission, or a commissioner thereof, and the claim investigator, shall, to the extent possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.
If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of compensation, the commission or a commissioner thereof may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his or her powers and duties, the claim investigator may petition the West Virginia Legislative Claims Commission for an appropriate order, including an order authorizing the investigator to take the depositions of witnesses by oral examination or written interrogatory, but the West Virginia Legislative Claims Commission shall not find a person in contempt for refusal to submit to a mental or physical examination.

§14-2A-18. Effect of no criminal charges being filed or conviction of offender.

The commission or a commissioner thereof, may approve an award of compensation whether or not any person is convicted for committing the conduct that is the basis of the award. The filing of a criminal charge shall be a prerequisite for receipt of compensation unless it is determined that no charges were filed due to the identity of the perpetrator being unknown: Provided, That no criminal charges need be filed if: (1) The claimant is an adult at the time the conduct giving rise to the claim occurred and no criminal charges were filed for reasons other than the desire of the claimant and a law-enforcement agency confirms that the available evidence supports a finding that a crime occurred; or (2) the claimant was a juvenile at the time the conduct giving rise to the claim occurred. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered.
The commission or a commissioner thereof, shall suspend, upon a request of the claim investigator, the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.


(a) By separate order, the commission or a commissioner thereof, shall determine and award reasonable attorney’s fees, commensurate with services rendered and reimbursement for reasonable and necessary expenses actually incurred shall be paid from the Crime Victims Compensation Fund to the attorney representing a claimant in a proceeding under this article at the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-nine of this code. Attorney’s fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney’s fees and reimbursement shall be in addition to awards of compensation, and attorney’s fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section. In no event may a prosecuting attorney or assistant prosecuting attorney represent any victim seeking compensation under this article.

(b) Each witness called by the commission to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to 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.
(a) As part of the order, the commission or a commissioner thereof, shall determine whether fees are due and owing for health care services rendered by a physician, hospital or other health care provider stemming from an injury received as defined under this article, and further, whether or not the physician, hospital or other health care provider has been presented an assignment of benefits, signed by the crime victim, authorizing direct payments of benefits to the health care provider. If such fees are due and owing and the health care provider has presented a valid assignment of benefits, the commission or a commissioner thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid out of the amount awarded the crime victim under this article directly to the physician, hospital or other health care provider. The requirements of this section shall be applicable to, and any such unpaid fees shall be determined and payable from, the awards made by the Legislature at regular session, 1987, and subsequently: Provided, That when a claim is filed under this section, the commission shall determine the total damages due the crime victim, and where the total damages exceed the maximum amount which may be awarded under this article, the amount paid the health care provider shall be paid in the same proportion to which the actual award bears to the total damages determined by the commission. In any case wherein an award is made which includes an amount for funeral, cremation or burial expenses, or a combination thereof, the commission shall provide for the payment directly to the provider or providers of such services, in an amount deemed proper by the commission, where such expenses are unpaid at the time of the award.

(b) If the health care provider has filed an assignment of benefits, the provider shall aid the crime victim in the development of his or her claim by providing the commission with the amount of such fees as well as the amount of any portion of the fees paid the provider by the crime victim directly or paid the provider for the crime victim by a collateral source.
(c) Whether or not a health care provider has filed an assignment of benefits, the commission shall disclose no information regarding the status of the claim to the provider: Provided, That the commission shall promptly notify the provider of the final disposition of the claim, if the provider is known to the commission.

(d) Whenever a person files a claim under this article, the statute of limitations for the collection of unpaid fees paid for such health care services shall be tolled during the pendency of the claim before the commission.

§14-2A-19b. Rates and limitations for health care services.

The commission may establish by rule or order maximum rates and service limitations for reimbursement of health care services rendered by a physician, hospital, or other health care provider. An informational copy of the maximum rates and service limitations shall be filed with the Joint Committee on Government and Finance upon adoption by the commission. Any change in the maximum rates or service limitations shall be effective sixty days after the adoption of the changes. A provider who accepts payment from the commission for a service shall accept the commission’s rates as payment in full and may not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the commission for that service. A provider may not charge a claimant for any difference between the cost of a service provided to a claimant and the commission’s payment for that service. To ensure service limitations are uniform and appropriate to the levels of treatment required by the claimant, the commission may review all claims for these services as necessary to ensure their medical necessity.

(a) The Legislative Auditor shall submit to the Department of Administration, on or before November 20, of each year, an anticipated budget for the Crime Victims Compensation Program provided in this article for the next fiscal year, which shall include:

1. An estimate of the balance and receipts anticipated in the Crime Victims Compensation Fund;
2. Amounts anticipated to be sufficient for the payment of all administrative expenses necessary for the administration of this article; and
3. Amounts anticipated to be sufficient for the payment of awards, attorney fees, witness fees and other authorized fees, costs or expenses that may arise under this article during the next fiscal year.

(b) The Governor shall include in his or her proposed budget bill and revenue estimates the amounts submitted by the Legislative Auditor under subsection (a) of this section.

(c) The clerk shall certify each authorized award and the amount of the award and make requisition upon the Crime Victims Compensation Fund to the Auditor. Notwithstanding any provision of chapter twelve of this code to the contrary, the Auditor shall issue a warrant to the Treasurer without further examination or review of the claim if there is a sufficient unexpended balance in the Crime Victims Compensation Fund.

(d) The commission may provide that payment be made to a claimant or to a third party for economic losses of the claimant and the order may provide an award for the payment for actual economic losses which are prospective as well as those which have already been incurred.

The West Virginia Legislative Claims Commission shall prepare and transmit annually to the Governor and the Legislature a report of the activities of the West Virginia Legislative Claims Commission under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the Crime Victims Compensation Fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the West Virginia Legislative Claims Commission, compensation of commissioners and commission personnel, the amount awarded as attorneys’ fees.


(a) The clerk of the West Virginia Legislative Claims Commission shall prepare an information brochure for the benefit of the general public, outlining the rights of claimants and procedures to be followed under this article. Copies of such brochure shall be distributed to law-enforcement agencies in the state, and be made available to other interested persons.

(b) Any law-enforcement agency that investigates an offense committed in this state involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his or her dependents concerning the availability of an award of compensation and advise such persons that an application for an award of compensation may be obtained from the clerk of the West Virginia Legislative Claims Commission.


(a) The West Virginia Legislative Claims Commission may promulgate rules and regulations to implement the provisions of this article.
(b) The West Virginia Legislative Claims Commission shall promulgate rules and regulations to govern the award of compensation to the spouse of, person living in the same household with, parent, child, brother or sister of the offender or his or her accomplice in order to avoid an unjust benefit to or the unjust enrichment of the offender or his or her accomplice.


Amendments made to the provisions of this article during the regular session of the Legislature in the year 1984, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the West Virginia Legislative Claims Commission on the effective date of the act of the Legislature which effects such 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”.

That §16-2K-1 and §16-2K-2 of the Code of West Virginia, 1931, as amended, are hereby repealed.
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, §16-24-5, §16-24-6 and §16-24-7 of the Code of West Virginia, 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.

That §16-25-1, §16-25-2, §16-25-3 and §16-25-4 of the Code of West Virginia, 1931, as amended, are hereby 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.


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.

That §25-1-10 of the Code of West Virginia, 1931, as 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.]


Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the West Virginia Health Benefit Exchange Act.


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 loan in which the initial total amount payable is less than $1,500, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account or revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment, hereinafter in this section referred to as a balloon payment, at the time it is due without penalty.

2 (2) With respect to a consumer credit sale or consumer loan whenever any scheduled payment is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, any writing purporting to contain the agreement of the parties shall contain language in form and substance substantially similar to the following: THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS: Followed, if there is only one installment which is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, by: AN INSTALLMENT OF $..... WILL BE DUE ON .......... or, if there is more than one such installment, by: LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS:
(The amount of every such installment and its due date shall be inserted).

(3) The provisions of this section shall not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer.

(4) Notwithstanding the foregoing provisions of this section, the commissioner may, by rules and regulations, if necessary to further protect consumers, otherwise regulate or control agreements to be entered into in a consumer credit sale or consumer loan transaction which provide for a balloon payment or prohibit parties from entering into any agreement in a consumer credit sale or consumer loan transaction which provides for a balloon payment.

§46A-2-122. Definitions.

For the purposes of this section and sections one hundred twenty-three, one hundred twenty-four, one hundred twenty-five, one hundred twenty-six, one hundred twenty-seven, one hundred twenty-eight, one hundred twenty-nine and one hundred twenty-nine-a of this article, the following terms shall have the following meanings:

(a) “Consumer” means any natural person obligated or allegedly obligated to pay any debt.

(b) “Claim” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

(c) “Debt collection” means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer.
(d) “Debt collector” means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims. The term excludes attorneys representing creditors provided the attorneys are licensed in West Virginia or otherwise authorized to practice law in the State of West Virginia and handling claims and collections in their own name as an employee, partner, member, shareholder or owner of a law firm and not operating a collection agency under the management of a person who is not a licensed attorney.

§46A-2-128. Unfair or unconscionable means.

No debt collector may use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer’s obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt except where such affirmation is obtained pursuant to applicable bankruptcy law;

(c) The collection or the attempt to collect from the consumer all or any part of the debt collector’s fee or charge for services rendered: Provided, That attorney’s fees, court costs and other reasonable collection costs and charges necessary for the collection of any amount due upon delinquent educational loans made by any institution of higher education within this state may be recovered when
the terms of the obligation so provide. Recovery of attorney’s fees and collection costs may not exceed thirty-three and one-third percent of the amount due and owing to any such institution: Provided, however, That nothing contained in this subsection shall be construed to limit or prohibit any institution of higher education from paying additional attorney fees and collection costs as long as such additional attorney fees and collection costs do not exceed an amount equal to five percent of the amount of the debt actually recovered and such additional attorney fees and collection costs are deducted or paid from the amount of the debt recovered for the institution or paid from other funds available to the institution;

(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating or modifying the obligation and by statute or regulation;

(e) Any communication with a consumer made more than three business days after the debt collector receives written notice from the consumer or his or her attorney that the consumer is represented by an attorney specifically with regard to the subject debt. To be effective under this subsection, such notice must clearly state the attorney’s name, address and telephone number and be sent by certified mail, return receipt requested, to the debt collector’s registered agent, identified by the debt collector at the office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the debt collector’s principal place of business. Communication with a consumer is not prohibited under this subsection if the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, or if the attorney consents to direct communication with the consumer. Regular account statements provided to the consumer and notices required to
be provided to the consumer pursuant to applicable law shall not constitute prohibited communications under this section; and

(f) When the debt is beyond the statute of limitations for filing a legal action for collection, failing to provide the following disclosure informing the consumer in all written communication with such consumer that:

(1) When collecting on a debt that is not past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U. S. C. 1681c: “The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) cannot sue you for it. If you do not pay the debt, (INSERT OWNER NAME) may report or continue to report it to the credit reporting agencies as unpaid”; and

(2) When collecting on debt that is past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U. S. C. 1681c: “The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) cannot sue you for it and (INSERT OWNER NAME) cannot report it to any credit reporting agencies.”

§46A-2-140. Pleadings not to be the basis of a cause of action.

Nothing contained in or omitted from a pleading filed in a court of this state shall be the basis of a cause of action under this chapter, nor shall the act of filing a civil action be the basis of a cause of action under this chapter unless the pleading or the filing of the civil action constitutes a material violation of sections 124(f), 127(d), 128(c), or 128(d) of this article: Provided, That demand in a pleading to award costs authorized by the applicable rules of civil procedure shall not be the basis of a cause of action under this chapter. For purposes of this section, a pleading shall have the same definition as provided in the Rules of Civil Procedure applicable in the court where the action is filed.
Further, nothing contained in this section is intended to abrogate or abolish common law causes of action for malicious prosecution, abuse of process, harassment or frivolity, but in no case shall the contents of pleadings in a civil action nor the institution of a civil action in any court be the basis for a claim of a violation of the West Virginia Consumer Credit and Protection Act except as set forth above.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.


(1) If a creditor or debt collector has violated the provisions of this chapter applying to collection of excess charges, security in sales and leases, disclosure with respect to consumer leases, receipts, statements of account and evidences of payment, limitations on default charges, assignment of earnings, authorizations to confess judgment, illegal, fraudulent or unconscionable conduct, any prohibited debt collection practice, or restrictions on interest in land as security, assignment of earnings to regulated consumer lender, security agreement on household goods for benefit of regulated consumer lender, and renegotiation by regulated consumer lender of a loan discharged in bankruptcy, the consumer has a cause of action to recover: (a) Actual damages; and (b) a right in an action to recover from the person violating this chapter a penalty of $1,000 per violation: Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of $175,000 or the total alleged outstanding indebtedness: Provided, however, That in a class action the aggregate limits on the amount of the penalty set forth above shall be applied severally to each named plaintiff and each class member such that no named plaintiff nor any class member may recover in excess of the greater of $175,000 or the total alleged outstanding indebtedness. With respect to violations arising from consumer credit sales, consumer leases or
consumer loans, or from sales as defined in article six of this chapter, no action pursuant to this subsection may be brought more than four years after the violations occurred: 

Provided further, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after the foreclosure sale is final.

(2) If a creditor has violated the provisions of this chapter respecting authority to make regulated consumer loans, the loan is void and the consumer is not obligated to pay either the principal or the loan finance charge. If he has paid any part of the principal or of the finance charge, he has a right to recover in an action the payment from the person violating this chapter or from an assignee of that person’s rights who undertakes direct collection of payments or enforcement of rights arising from the debt.

With respect to violations arising from regulated consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the violation occurred. With respect to violations of the provisions of this chapter respecting the authority to make arising from other regulated consumer loans, no action pursuant to this subsection may be brought more than four years after the violation occurred: Provided, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after the foreclosure sale is final.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this chapter and if he has paid an excess charge, he has a right to a refund. A refund may be made by reducing the consumer’s obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action the excess amount from the person who made the excess charge or from an assignee of that person’s rights who undertakes direct collection of
payments from or enforcement of rights against the consumer arising from the debt.

(4) If a creditor or debt collector has contracted for or received a charge in excess of that allowed by this chapter, the consumer may, in addition to recovering such excess charge, also recover from the creditor or the person liable in an action a penalty of $1,000 per violation: Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of $175,000 or the total alleged outstanding indebtedness: Provided, however, That in a class action the aggregate limits on the amount of the penalty set forth above shall be applied severally to each named plaintiff and each class member such that no named plaintiff nor any class member may recover in excess of the greater of $175,000 or the total alleged outstanding indebtedness: Provided further, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after said foreclosure sale is final.

(5) Except as otherwise provided, a violation of this chapter does not impair rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge, the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) A creditor or debt collector has no liability for a penalty under subsection (1) or (4) of this section if, after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error: (a) Within fifteen days if the error affects no more than two persons; or (b) within sixty days if the error affects more than two persons. If the violation consists of a prohibited agreement, giving the consumer a corrected
copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(8) If the creditor or debt collector establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2) and (4) of this section and the validity of the transaction is not affected.


Rights granted by this chapter may be asserted as a claim for setoff or defense to an action against a consumer without regard to any limitation of actions. Any counterclaim is subject to the appropriate limitation of actions set forth in this chapter.

§46A-5-108. Right to cure.

(a) No action may be brought pursuant to this article and articles two, three and four of this chapter until the consumer has informed the creditor or debt collector in writing and by certified mail, return receipt requested, to the creditor’s or debt collector’s registered agent identified by the creditor or debt collector at the office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the creditor’s or debt collector’s principal place of business, of the alleged violation and the factual basis for the violation and provide the creditor or debt collector forty-five days from receipt by the agent or at the principal place of business referenced above of the notice of violation but twenty days in the case a cause of action has already been filed to make a cure offer, which shall be provided to the consumer’s counsel or, if unrepresented, to the consumer by certified mail, return receipt requested: Provided, That the consumer shall have
twenty days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn. When a claim under the provisions set forth in section one hundred one is presented as a counterclaim, cross-claim or third party claim, the notice of right to cure shall be served with the counterclaim, cross claim or third party claim in any manner permitted by the Rules of Civil Procedure.

(b) If a cure offer is accepted, the creditor or debt collector has twenty days to begin effectuating the agreed upon cure and the cure must be completed within a reasonable time.

(c) Any applicable statute of limitations is tolled for the 45-day period set forth in subsection (a) of this section or for the period the effectuation of the cure offer is being performed, whichever is longer.

(d) Nothing in this section prevents a consumer that has accepted a cure offer from bringing a civil action against a creditor or debt collector for failing to timely effect the cure offer.

(e) Where an action is brought under this article or article two, three or four of this chapter, it is a complete defense that a cure offer was made, accepted and the agreed upon cure was performed. If the finder of fact determines that the cure offer was accepted and the agreed upon cure performed, the creditor or debt collector is entitled to reasonable attorney fees and costs attendant to defending the action.

(f) No cure offer is admissible in any proceeding initiated pursuant to the provisions of this article unless the cure offer is delivered by a creditor or debt collector to the person claiming loss or to any attorney representing such person prior to the filing of the creditor or debt collector’s initial responsive pleading in such proceeding. If the cure offer is timely delivered by the creditor or debt collector, then the creditor or debt collector may introduce the cure offer into evidence at trial. The creditor or debt collector is
not liable for the consumer’s attorney’s fees and court costs incurred following delivery of the cure offer unless the actual damages, civil penalties and any other monetary or equitable relief provided for under this article and articles two, three and four of this chapter are found to have been sustained and awarded, without consideration of attorney 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.

(a) Except as otherwise provided in this section, this chapter shall become operative at 12:01 a.m. on September 1, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, in order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make regulated consumer loans under this chapter as amended, the provisions of article four of this chapter, relating to regulated consumer lenders, and the provisions of article seven of this chapter, relating to their administration, shall, to the extent necessary, become operative for such purposes at 12:01 a.m. on September 1, 1996.

(c) Transactions entered into before this chapter becomes operative and the rights, duties and interests flowing from them thereafter may be terminated, completed, consummated or enforced as required or permitted by any statute, rule of law or other law amended, repealed or modified by this chapter as though the repeal, amendment or modification had not occurred, but this chapter applies to:

(1) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases and consumer loans whenever made;
(2) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into, arranged or contracted for before this chapter becomes operative; and

(3) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

(d) Applicability. — The amendments made during the 2017 regular session of the Legislature to section one hundred five, article two of this chapter shall apply to consumer credit sales or consumer loans entered into on after the effective date of those amendments. The amendments made during the 2017 regular session of the Legislature to sections one hundred twenty-eight and one hundred forty, article two of this chapter, shall apply to all causes of accruing on or after the effective date of those amendments. The amendments made during the 2017 regular session of the Legislature to section one hundred twenty-two, article two and sections one hundred one and one hundred eight, article five of this chapter shall apply to all causes of action filed on or after the effective date of 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.]
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.

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

(b) With respect to this subsection:

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

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

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

(c) All payments made to a creditor in accordance with the terms of any consumer credit sale or consumer loan shall be credited upon receipt against payments due: Provided, That amounts received and applied during a cure period will not result in a duty to provide a new notice of right to cure: Provided, however, That partial amounts received during the period set forth in subdivision (3) subsection (b) of this section do not create an automatic duty to reinstate and may be returned by the creditor. Default charges shall be accounted for separately. Those recoverable charges set forth in said subsection arising during the period described therein may be added to principal.
(d) At least once every twelve months, the holder or servicer of each consumer loan secured by real property against which the creditor assesses any default charge, and:

(1) Not serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home Administration, the Veterans Administration, Department of Housing and Urban Development, shall transmit to the consumer an accounting of every default charge assessed within the previous twelve months, including the date, amount and nature of the cost.

This subsection does not apply to delinquency charges permitted under sections one hundred twelve and one hundred thirteen, article three of this chapter; credit line over-the-limit fees; deferral charges permitted under section one hundred fourteen of said article; collateral protection insurance permitted under section one hundred nine-a of said article; and advances to pay taxes.

(e) A provision in violation of this section is unenforceable. The amendments to this section by acts of the Legislature in the regular session of 2003 are a clarification of existing law and shall be retroactively applied to all agreements in effect on the date of passage of the amendments, except where controversies arising under those agreements are pending prior to the date of passage of the amendments.

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

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.

(a) All payments made to a creditor in accordance with the terms of a precomputed consumer credit sale or consumer loan shall be applied to installments in the order in which they fall due.

(b) All payments made to a creditor which do not comply with the terms of a precomputed consumer credit sale or consumer loan may be held in a suspense or unapplied funds account. The creditor must disclose to the consumer the total amount of funds held in a suspense or unapplied funds account. On accumulation of funds sufficient to cover a full payment in accordance with terms of the precomputed consumer credit sale or consumer loan agreement, the creditor shall apply the payment in accordance with subsection (a) of this section.

(c) When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. This method of allocation is the sum of the digits method, commonly referred to as the “Rule of 78”.

(d) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the consumer that portion of the sales finance charge or loan finance charge in the manner specified in section five-d, article six, chapter forty-seven of this code: 

*Provided,* That no rebate of less than $1 need be made.
(e) Upon prepayment in full of a precomputed or nonprecomputed consumer credit sale or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise, except where the loan is a purchase money loan secured by a first lien mortgage on residential property, or is made by a federally insured depository institution, the creditor shall rebate to the consumer that portion of the unearned prepaid finance charges attributable to loan or credit investigations fees, origination fees or points in the manner specified in subsection (c), section five-d, article six, chapter forty-seven of this code: Provided, That no rebate of less than $1 need be made: Provided, however, That if the loan was made in furtherance of aiding or abetting a person to whom the loan is assigned to evade this rebate, then the rebate required herein shall apply.

(f) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered and such judgment shall bear interest until paid at the rate of ten percent per annum.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

(1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

(a) Five percent of the unpaid amount of the installment, not to exceed $30; or

(b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under subdivision (a), subsection (1) of this section may be collected only once on
an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though a delinquency or deferral charge on an earlier installment may not have been paid in full.

(4) If two installments, or parts thereof, of a precomputed consumer credit sale or consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is based on unpaid balances. In such event, the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of any installment then delinquent and thereafter may make a sales finance charge or loan finance charge as authorized by the appropriate provisions on sales finance charges or loan finance charges for consumer credit sales or consumer loans. The amount of the rebate may not be reduced by the amount of any permitted minimum charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the delinquent installments shall be rebated and no further delinquency or deferral charges shall be made.

(5) The commissioner shall prescribe by rule the method or procedure for the calculation of delinquency charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.
§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

(1) In addition to the continuation of the sales finance charge or loan finance charge on a delinquent installment with respect to a nonprecomputed consumer credit sale or consumer loan, refinancing or consolidation, repayable in installments, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date of five percent of the unpaid amount of the installment, not to exceed $30.

(2) A delinquency charge under subsection (1) of this section may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though a delinquency or deferral charge on an earlier installment may 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.


As used in this act:

1 (a) “Administer” means the direct application of a controlled substance whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

2 (1) A practitioner (or, in his or her presence, by his or her authorized agent); or

3 (2) The patient or research subject at the direction and in the presence of the practitioner.
(b) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) “Analogue” means a substance that, in relation to a controlled substance, has a substantially similar chemical structure.

(d) “Bureau” means the “Bureau of Narcotics and Dangerous Drugs, United States Department of Justice” or its successor agency.

(e) “Controlled substance” means a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(f) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) “Imitation controlled substance” means: (1) A controlled substance which is falsely represented to be a different controlled substance; (2) a drug or substance which is not a controlled substance but which is falsely represented to be a controlled substance; or (3) a controlled substance or other drug or substance or a combination thereof which is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or priced so as to cause a reasonable person to believe that it is a controlled substance.

(h) “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of: (1) A controlled substance, whether or not there
(i) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(j) “Dispenser” means a practitioner who dispenses.

(k) “Distribute” means to deliver, other than by administering or dispensing, a controlled substance, a counterfeit substance or an imitation controlled substance.

(l) “Distributor” means a person who distributes.

(m) “Drug” means: (1) Substances recognized as drugs in the official “United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary”, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in subdivision (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(n) “Fentanyl analog or derivative” means any substance which has a chemical structure which is substantially similar to the chemical structure of fentanyl, including any of its salts, isomers, or salts of isomers, including any chemical compound or mixture. For purposes of this chapter, the term “fentanyl derivative or analog” includes any fentanyl analog that is not otherwise scheduled in this chapter.

(o) “Immediate derivative” means a substance which is the principal compound or any analogue of the parent
compound manufactured from a known controlled substance primarily for use and which has equal or similar pharmacologic activity as the parent compound which is necessary to prevent, curtail or limit manufacture.

(p) “Immediate precursor” means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(q) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

(2) By a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(r) “Marijuana” means all parts of the plant “Cannabis sativa L.”, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, immediate
derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

“Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, immediate derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, immediate derivative or preparation of coca leaves and any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

“Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section two hundred one, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.
“Opium poppy” means the plant of the species “Papaver somniferum L.”, except its seeds.

“Person” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“Placebo” means an inert medicament or preparation administered or dispensed for its psychological effect, to satisfy a patient or research subject or to act as a control in experimental series.

“Poppy straw” means all parts, except the seeds, of the opium poppy after mowing.

“Practitioner” means:

1. A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

2. A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

“Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

“State”, when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

“Ultimate user” means a person who lawfully possesses a controlled substance for his or her own use or
for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

ARTICLE 2. STANDARDS AND SCHEDULES.

*§60A-2-204. Schedule I.

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

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

1. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]—phenylacetamide);
2. Acetylmethadol;
3. Allylprodine;
4. Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
5. Alphameprodine;
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-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-((propanilido) piperidine);
23  (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]—phenylpropanamide);
24  (9) Benzethidine;
25  (10) Betacetylmethadol;
26  (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
27  (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
28  (13) Betameprodine;
29  (14) Betamethadol;
30  (15) Betaprodine;
31  (16) Clonitazene;
32  (17) Dextromoramide;
33  (18) Diampromide;
34  (19) Diethylthiambutene;
35  (20) Difenoxin;
36  (21) Dimenoxadol;
37  (22) Dimepheptanol;
38  (23) Dimethylthiambutene;
39  (24) Dioxaphetyl butyrate;
40  (25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Fentanyl analog or derivative, as that term is defined in article one of this chapter: Provided, That fentanyl and carfentanil remains a Schedule II substance, as set forth in section two hundred six of this article;
(30) Furethidine;
(31) Hydroxypethidine;
(32) Ketobemidine;
(33) Levomoramide;
(34) Levophenacylmorphan;
(35) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
(36) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]—phenylpropanamide);
(37) Morpheridine;
(38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(39) Noracymethadol;
(40) Norlevorphanol;
(41) Normethadone;
(42) Norpipanone;
(43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
(44) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxyipiperidine);
(45) Phenadoxone;  
(46) Phenampromide;  
(47) Phenomorphan;  
(48) Phenoperidine;  
(49) Piritramide;  
(50) Proheptazine;  
(51) Properidine;  
(52) Propiram;  
(53) Racemoramide;  
(54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidinyl]-propanamide);  
(55) Tilidine;  
(56) Trimeperidine.

(c) Opium derivatives. — Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;  
(2) Acetyldihydrocodeine;  
(3) Benzylmorphine;  
(4) Codeine methylbromide;  
(5) Codeine-N-Oxide;  
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.

(d) Hallucinogenic substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term “isomer” includes the optical, position and geometric isomers):
(1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2- aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

(4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).

(C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

(5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(6) 2,5-dimethoxy-4-ethylamphetamine; some trade or other names: DOET;

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

(8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(9) 5-methoxy-3, 4-methylenedioxy-amphetamine;

(10) 4-methyl-2,5-dimethoxyamphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP”;
(11) 3,4-methyldedioxyamphetamine;
(12) 3,4-methylenedioxymethamphetamine (MDMA);
(13) 3,4-methylenedioxy-N-ethylamphetamine (also known as (ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);
(14) N-hydroxy-3,4-methylenedioxyamphetamine (also known as (hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and (hydroxy MDA);
(15) 3,4,5-trimethoxyamphetamine;
(16) 5-methoxy-N, N-dimethyltryptamine (5-MeO-DMT);
(17) Alpha-methyltryptamine (other name: AMT);
(18) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;
(19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;
(20) Dimethyltryptamine; some trade or other names: DMT;
(21) 5-Methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT);
(22) Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1’, 2’: 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;
(23) Lysergic acid diethylamide;
(24) Marijuana;
(25) Mescaline;
(26) Parahexyl-7374; some trade or other names: 3-
Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-
6H-dibenzo [b,d] pyran; Synhexyl;
(27) Peyote; meaning all parts of the plant presently
classified botanically as Lophophora williamsii Lemaire,
whether growing or not, the seeds thereof, any extract from
any part of such plant, and every compound, manufacture,
salts, immediate derivative, mixture or preparation of such
plant, its seeds or extracts;
(28) N-ethyl-3-piperidyl benzilate;
(29) N-methyl-3-piperidyl benzilate;
(30) Psilocybin;
(31) Psilocyn;
(32) Tetrahydrocannabinols; synthetic equivalents of
the substances contained in the plant, or in the resinous
extractives of Cannabis, sp. and/or synthetic substances,
immediate derivatives and their isomers with similar
chemical structure and pharmacological activity such as the
following:
delta-1 Cis or trans tetrahydrocannabinol, and their
optical isomers;
delta-6 Cis or trans tetrahydrocannabinol, and their
optical isomers;
delta-3,4 Cis or trans tetrahydrocannabinol, and its
optical isomers;
(Since nomenclature of these substances is not
internationally standardized, compounds of these structures,
regardless of numerical designation of atomic positions
covered).
(33) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(34) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(35) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

(36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(37) 4-methylmethcathinone (Mephedrone);

(38) 3,4-methylenedioxyxpyrovalerone (MDPV);

(39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)

(47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)

(48) 3,4-Methylenedioxy-N-methylcathinone (Methylone)
chapter (49)  
(2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7, its optical isomers, salts and salts of isomers

(50) 5-methoxy-N, N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT (5-MeO-DMT)

(51) Alpha-methyltryptamine (other name: AMT)

(52) 5-methoxy-N, N-diisopropyltryptamine (other name: 5-MeO-DIPT)

(53) Synthetic Cannabinoids as follows:

(A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol) {also known as CP 47,497 and homologues};

(B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl) phenol {also known as CP 47,497-C8 homolog};

(C) [(6aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)] {also known as HU-210};

(D) (dexanabinol);

(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol) {also known as HU-211};

(E) 1-Pentyl-3-(1-naphthoyl) indole {also known as JWH-018};

(F) 1-Butyl-3-(1-naphthoyl) indole {also known as JWH-073};

(G) (2-methyl-1-propyl-1H-indol-3-yl)-1-napthalenylmethanone {also known as JWH-015};
(H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};

(I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

(J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

(K) 2-((1S,2S,5S)-5-hydroxy-2- (3-hydroxypropyl)cyclohexyl) -5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-122};

(M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-398};

(N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

(O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8};

(P) 1-pentyl-3-[1-(4-methoxynaphthoyl) indole (JWH-081);

(Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201); and

(R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole (AM694).

(54) Synthetic cannabinoids or any material, compound, mixture or preparation which contains any quantity of the following substances, including their analogues, congeners, homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as follows:
(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methylcycloctan-2-YL) phenol);

(B) HU-210, [(6AS,10AS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methylcycloctan-2-YL)-6A,7,10,10A-tetrahydrobenzo[C] chromen-1-OL]);

(C) HU-211, (dexamabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-methylcycloctan-2-YL)-6A,7,10,10atetrahydrobenzo [C] chromen-1-OL);

(D) JWH-018, 1-pentyl-3-(1-naphthoyl) indole;

(E) JWH-019, 1-hexyl-3-(1-naphthoyl) indole;

(F) JWH-073, 1-butyl-3-(1-naphthoyl) indole;

(G) JWH-200, (1-(2-morpholin-4-ylethyl) indol-3-yl)-Naphthalen-1-ylmethanone;

(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl) indole.

(55) Synthetic cannabinoids including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedule I through V, is not a Federal Food and Drug Administration approved drug or used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues if possible within the specific chemical designation:

(A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in the
plant or in the resinous extractives of cannabis or synthetic
substances, derivatives and their isomers with analogous
chemical structure and or pharmacological activity such as the
following:

(i) DELTA-1 CIS OR trans tetrahydrocannabinol and
their optical isomers.

(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and
their optical isomers.

(iii) DELTA-3,4 CIS OR their trans tetrahydrocannabinol and their optical isomers.

(B) Naphthoyl indoles or any compound containing a 3-
(-1- Naphthoyl) indole structure with substitution at the
nitrogen atom of the indole ring whether or not further
substituted in the indole ring to any extent and whether or
not substituted in the naphthyl ring to any extent. This shall
include the following:

(i) JWH 015;
(ii) JWH 018;
(iii) JWH 019;
(iv) JWH 073;
(v) JWH 081;
(vi) JWH 122;
(vii) JWH 200;
(viii) JWH 210;
(ix) JWH 398;
(x) AM 2201;
(xi) WIN 55,212.
(56) Synthetic Phenethylamines (including their optical, positional, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers):

(A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/2C-I-NBOMe);

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

(C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/2C-B-NBOMe);

(57) Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

(A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

(B) furanyl fentanyl;

(C) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

(D) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);

(E) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl).

(58) Opioid Receptor Agonist (including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers):

(A) AH-7921 (3,4-dichloro-N-(1dimethylamino)cyclohexylmethyl]benzamide).
(59) Naphylmethylindoles or any compound containing a 1-hindol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

(60) Naphthoylpyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

(61) Naphthylmethylindenes or any compound containing a Naphthylideneindene structure with substitution at the 3-position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

(62) Phenylacetylindoles or any compound containing a 3-Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

(A) RCS-8, SR-18 OR BTM-8;
(B) JWH 250;
(C) JWH 203;
(D) JWH 251;
(E) JWH 302.

(63) Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a
substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

(A) CP 47,497 and its homologues and analogs;
(B) Cannabicyclohexanol;
(C) CP 55,940.

(64) Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

(A) AM 694;
(B) Pravadoline WIN 48,098;
(C) RCS 4;
(D) AM 679.

(65) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-naphthenymethanone. This shall include WIN 55,212-2.

(66) Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.

(67) Adamantoylindoles or any compound containing a 3-(-1-Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

(68) Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with
substitution at the nitrogen atom of the indole ring whether
or not further substituted in the indole ring to any extent and
whether or not substituted in the tetramethylcyclopropyl
ring to any extent. This shall include UR-144 and XLR-11.

(69) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide.
This shall include AKB48.

(70) Any other synthetic chemical compound that is a
Cannabinoid receptor type 1 agonist as demonstrated by
binding studies and functional assays that is not listed in
Schedules II, III, IV and V, not federal Food and Drug
Administration approved drug or used within legitimate,
approved medical research. Since nomenclature of these
substances is not internationally standardized, any
immediate precursor or immediate derivative of these
substances shall be covered.

(71) Tryptamines:

(A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT)

(B) 4-hydroxy-N, N-diisopropyltryptamine (4-HO-DiPT)

(C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

(D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

(E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-DiPT)

(F) 5-methoxy-α-methyltryptamine (5-MeO-AMT)

(G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-DMT)

(H) 4-hydroxy Diethyltryptamine (4-HO-DET)
(I) 5-methoxy-N, N-diallyltryptamine (5-MeO-DALT)

(J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO DMT)

(K) 4-hydroxy Diethyltryptamine (4-HO-DET)

(72) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA);

(73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA);

(74) [1-(5-fluoropentyl)-1H-indazol-3-yl (naphthalen-1-yl)methanone (THJ-2201);

(75) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC);

(76) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22);

(77) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA);

(78) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA);

(79) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names, MAB-CHMINACA and ADB-CHMINACA);

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

(1) Mecloqualone;

(2) Methaqualone.

(f) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

(3) Fenethylline;

(4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)propiophenone; alpha- (methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxyxypovalerone and/or mephedrone; 3,4-methylenedioxyxypovalerone (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

(5) (+-) cis-4-methylaminorex; ((+-) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine;
(7) N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(8) Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.

(9) Substituted amphetamines:

(A) 2-Fluoroamphetamine
(B) 3-Fluoroamphetamine
(C) 4-Fluoroamphetamine
(D) 2-chloroamphetamine
(E) 3-chloroamphetamine
(F) 4-chloroamphetamine
(G) 2-Fluoromethamphetamine
(H) 3-Fluoromethamphetamine
(I) 4-Fluoromethamphetamine
(J) 4-chloromethamphetamine

(10) 4-methyl-N-ethylcathinone (4-MEC);

(11) 4-methyl-alpha-pyrrolidinopropiophenone (4-MePPP);

(12) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one (butylone);

(13) 2-(methylamino)-1-phenylpentan-1-one (pentedrone);

(14) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (pentyline);

(15) 4-fluoro-N-methylcathinone (4-FMC);
(16) 3-fluoro-N-methylcathinone (3-FMC);

(17) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (naphyrone); and

(18) Alpha-pyrrolidinobutiophenone (α-PBP).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) N-benzylpiperazine, also known as BZP.

(h) The following controlled substances are included in Schedule I:

(1) Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2-Aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

(A) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl or halide substituents whether or not further substituted in the ring system by one or more other univalent substituents.

(B) By substitution at the 3-Position with an acyclic alkyl substituent.

(C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.
(D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

(2) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of fentanyl.

(a) For purposes of this section,

(1) “Controlled substance” shall have the same meaning as provided in subsection (e), section one hundred one, article one of this chapter.

(2) “Fentanyl” refers to the substance identified in subdivision (9), subsection (c), section two hundred six, article two of this chapter, and any analog or derivative thereof.

(b) Any person who violates the provisions of subsection (a), section four hundred one of this article or section four hundred nine of this article in which fentanyl is a controlled substance involved in the offense, either alone or in combination with another controlled substance, shall be guilty of a felony, and upon conviction thereof, shall be punished in accordance with the following:

(1) If the net weight of fentanyl involved in the offense is less than one gram, such person shall be imprisoned in a correctional facility not less than two nor more than ten years.

(2) If the net weight of fentanyl involved in the offense is one gram or more but less than five grams, such person shall be imprisoned in a correctional facility not less than three nor more than fifteen years.
(a) The state Board of Pharmacy shall administer the provisions of this chapter. It shall also, on the first day of each regular legislative session, recommend to the Legislature which substances should be added to or deleted from the schedules of controlled substances contained in this article or reschedule therein. The state Board of
Pharmacy shall also have the authority between regular legislative sessions, on an emergency basis, to add to or delete from the schedules of controlled substances contained in this article or reschedule such substances based upon the recommendations and approval of the federal food, drug and cosmetic agency, and shall report such actions on the first day of the regular legislative session immediately following said actions.

In making any such recommendation regarding a substance, the state Board of Pharmacy shall consider the following factors:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) The potential of the substance to produce psychic or physiological dependence liability; and

(7) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the state Board of Pharmacy shall make findings with respect to the substance under consideration. If it finds that any substance not already controlled under any schedule has a potential for abuse, it shall recommend to the Legislature that the substance be added to the appropriate schedule. If it finds that any substance already controlled under any schedule should be rescheduled or deleted, it shall so recommend to the Legislature.
(c) If the state Board of Pharmacy designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal laws and notice thereof is given to the state Board of Pharmacy, the board shall recommend similar control of such substance to the Legislature, specifically stating that such recommendation is based on federal action and the reasons why the federal government deemed such action necessary and proper.

(e) The authority vested in the board by subsection (a) of this section shall not extend to distilled spirits, wine, malt beverages or tobacco as those terms are defined or used in other chapters of this code nor to any nonnarcotic substance if such substance may under the “Federal Food, Drug and Cosmetic Act” and the law of this state lawfully be sold over the counter without a prescription.

(f) Notwithstanding any provision of this chapter to the contrary, the sale, wholesale, distribution or prescribing of a cannabidiol in a product approved by the Food and Drug Administration is permitted and shall be placed on the schedule as provided for by the Drug Enforcement Administration.

*§60A-2-204. Schedule I.*

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

*Note:* This section was also amended by H. B. 2329 (Chapter 38), which passed subsequent to this act.
(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-((propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]—phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
(13) Betameprodine;
(14) Betamethadol;
(15) Betaprodine;
(16) Clonitazene;
(17) Dextromoramide;
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;
(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
(35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-phenylpropanamide);

(36) Morpheridine;

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(38) Noracymethadol;

(39) Norlevorphanol;

(40) Normethadone;

(41) Norpipanone;

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

(43) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxy piperidine);

(44) Phenadoxone;

(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidinyl]-propanamide);

(54) Tilidine;
(55) Trimeperidine.

(c) Opium derivatives. — Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;  
(20) Nicomorphine;  
(21) Normorphine;  
(22) Pholcodine;  
(23) Thebacon.

(d) Hallucinogenic substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term “isomer” includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2,5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).

(C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe).
(5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(6) 2,5-dimethoxy-4-ethylamphetamine; some trade or other names: DOET;

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

(8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(9) 5-methoxy-3, 4-methylenedioxyamphetamine;

(10) 4-methyl-2,5-dimethoxyamphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP”;

(11) 3,4-methylenedioxyamphetamine;

(12) 3,4-methylenedioxymethylamphetamine (MDMA);

(13) 3,4-methylenedioxy-N-ethylamphetamine (also known as (ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(14) N-hydroxy-3,4-methylenedioxyamphetamine (also known as (hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and (hydroxy MDA);

(15) 3,4,5-trimethoxyamphetamine;

(16) 5-methoxy-N, N-dimethyltryptamine (5-MeO-DMT);

(17) Alpha-methyltryptamine (other name: AMT);

(18) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N- dimethyltryptamine; mappine;

(19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(20) Dimethyltryptamine; some trade or other names: DMT;

(21) 5-Methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT);

(22) Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1’, 2’: 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

(23) Lysergic acid diethylamide;

(24) Marijuana;

(25) Mescaline;

(26) Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

(27) Peyote; meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of such plant, its seeds or extracts;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Psilocybin;

(31) Psilocyn;
(32) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

- delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(33) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(34) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(35) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

(36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(37) 4-methylmethcathinone (Mephedrone);

(38) 3,4-methylenedioxypyrovalerone (MDPV);
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(39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

(47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

(48) 3,4-Methylenedioxy-N-methylcathinone (Methylone);

(49) (2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7, its optical isomers, salts and salts of isomers

(50) 5-methoxy-N, N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT);

(51) Alpha-methyltryptamine (other name: AMT);

(52) 5-methoxy-N, N-diisopropyltryptamine (other name: 5-MeO-DIPT);

(53) Synthetic Cannabinoids as follows:
(A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol {also known as CP 47,497 and homologues};

(B) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl) phenol {also known as CP 47,497-C8 homolog};

(C) [(6aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol] {also known as HU-210};

(D) (dexanabinol);

(E) 1-Pentyl-3-(1-naphthoyl) indole {also known as JWH-018};

(F) 1-Butyl-3-(1-naphthoyl) indole {also known as JWH-073};

(G) (2-methyl-1-propyl-1H-indol-3-yl)-1-napthalenyl-methanone {also known as JWH-015};

(H) (1-hexyl-1H-indol-3-yl)-1-napthalenyl-methanone {also known as JWH-019};

(I) [1-[2-(4-morpholinyl) ethyl]-1H-indol-3-yl]-1-napthalenyl-methanone {also known as JWH-200};

(J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

(K) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxy-1-propyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};
(L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) methanone {also known as JWH-122};

(M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) methanone {also known as JWH-398;}

(N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

(O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8};

(P) 1-pentyl-3-[1-(4-methoxynaphthoyl) indole (JWH-081);

(Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201); and

(R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole (AM694).

(54) Synthetic cannabinoids or any material, compound, mixture or preparation which contains any quantity of the following substances, including their analogues, congeners, homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as follows:

(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-YL) phenol;

(B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL]};
(C) HU-211, (dexanabinol, (6AS,10AS)-9-hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-6A,7,10,10 atetrahydrobenzo [C] chromen-1-OL); 310
(D) JWH-018, 1-pentyl-3-(1-napthoyl) indole;
(E) JWH-019, 1-hexyl-3-(1-napthoyl) indole;
(F) JWH-073, 1-butyl-3-(1-napthoyl) indole;
(G) JWH-200, 1-(2-morpholin-4-ylethyl) indol-3-yl)-Naphthalen-1-ylmethanone;
(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl) indole.

(55) Synthetic cannabinoids including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug Administration approved drug or used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues if possible within the specific chemical designation:

(A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with analogous chemical structure and or pharmacological activity such as the following:

(i) DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.
(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their Optical isomers.

(iii) DELTA-3,4 CIS OR trans tetrahydrocannabinol and their optical isomers.

(B) Naphthoyl indoles or any compound containing a 3-(-1-Napthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:

(i) JWH 015;
(ii) JWH 018;
(iii) JWH 019;
(iv) JWH 073;
(v) JWH 081;
(vi) JWH 122;
(vii) JWH 200;
(viii) JWH 210;
(ix) JWH 398;
(x) AM 2201;
(xi) WIN 55,212.

(56) Synthetic Phenethylamines (including their optical, positional, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers):

(A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);
(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

(C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/2C-B-NBOMe);

(57) Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

(A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

(B) furanyl fentanyl;

(C) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

(D) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-y1)-N-phenylbutanamide, (butyryl fentanyl);

(E) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethylpiperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl).

(58) Opioid Receptor Agonist (including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers):

(A) AH-7921 (3,4-dichloro-N-(1dimethylamino)cyclohexylmethyl]benzamide).

(59) Naphylmethylindoles or any compound containing a 1hindol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.
(60) Naphthoylpyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

(61) Naphthylmethylindenes or any compound containing a Naphthylideneindene structure with substitution at the 3-Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

(62) Phenylacetylindoles or any compound containing a 3-Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

- RCS-8, SR-18 OR BTM-8;
- JWH 250;
- JWH 203;
- JWH 251;
- JWH 302.

(63) Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

- CP 47,497 and its homologues and analogs;
- Cannabicyclohexanol;
- CP 55,940. 
(64) Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

(A) AM 694;
(B) Pravadoline WIN 48,098;
(C) RCS 4;
(D) AM 679.

(65) [2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-yl]-1-napthalenymethanone. This shall include WIN 55,212-2.

(66) Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.

(67) Adamantoylindoles or any compound containing a 3-(-1-Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

(68) Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

(69) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.
(70) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

(71) Tryptamines:

(A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT)

(B) 4-hydroxy-N, N-diisopropyltryptamine (4-HO-DiPT)

(C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

(D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

(E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-DiPT)

(F) 5-methoxy-α-methyltryptamine (5-MeO-AMT)

(G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-DMT)

(H) 4-hydroxy Diethyltryptamine (4-HO-DET)

(I) 5- methoxy- N, N- diallyltryptamine (5-MeO-DALT)

(J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO DMT)

(K) 4-hydroxy Diethyltryptamine (4-HO-DET)
(72) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA);

(73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA);

(74) [1-(5-fluoropentyl)-1H-indazol-3-yl (naphthalen-1-yl)methanone (THJ-2201);

(75) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC);

(76) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22);

(77) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA);

(78) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA);

and

(79) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names, MAB-CHMINACA and ADB-CHMINACA);

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

(1) Mecloqualone;

(2) Methaqualone.
(f) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

1. Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

2. Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

3. Fenethylline;

4. Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha—methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypyrovalerone and/or mephedrone; 3,4-methylenedioxypyrovalerone (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

5. (+-) cis-4-methylaminorex; ((+-) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

6. N-ethylamphetamine;

7. N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

8. Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.
(9) Substituted amphetamines:

(A) 2-Fluoroamphetamine
(B) 3-Fluoroamphetamine
(C) 4-Fluoroamphetamine
(D) 2-Chloroamphetamine
(E) 3-Chloroamphetamine
(F) 4-Chloroamphetamine
(G) 2-Fluoromethamphetamine
(H) 3-Fluoromethamphetamine
(I) 4-Fluoromethamphetamine
(J) 4-Chloromethamphetamine

(10) 4-Methyl-N-ethylcathinone (4-MEC);

(11) 4-Methyl-alpha-pyrrolidinopropiophenone (4-MePPP);

(12) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (butylone);

(13) 2-(methylamino)-1-phenylpentan-1-one (pentedrone);

(14) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (pentylone);

(15) 4-Fluoro-N-methylcathinone (4-FMC);

(16) 3-Fluoro-N-methylcathinone (3-FMC);

(17) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (naphyrone); and

(18) Alpha-pyrrolidinobutiophenone (α-PBP).
(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

1. N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

2. N-[1-(2-thienyl) methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

3. N-benzylpiperazine, also known as BZP.

(h) The following controlled substances are included in Schedule I:

1. Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2- Aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

   A. By substitution in the ring system to any extent with Alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl or halide Substituents whether or not further substituted in the ring system by one or more other univalent substituents.

   B. By substitution at the 3-Position with an acyclic alkyl substituent.

   C. By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.

   D. By inclusion of the 2-amino nitrogen atom in a cyclic structure.
(2) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

§60A-2-206. Schedule II.

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

(b) Substances, vegetable origin or chemical synthesis. — Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Dihydroetorphine;
(I) Ethylmorphine;
(J) Etorphine hydrochloride;
(K) Hydrocodone;
(L) Hydromorphone;
(M) Metopon;
(N) Morphine;
(O) Oripavine;
(P) Oxycodone;
(Q) Oxymorphone; and
(R) Thebaine;

(2) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;
(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) Opiates. — Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk dextropropoxyphene (nondosage forms);
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol; some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM;
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(18) Pethidine; (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil;

(28) Tapentadol;

(29) Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers.

(d) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
(1) Amphetamine, its salts, optical isomers and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers and salts of its isomers;

(3) Methylphenidate;

(4) Phenmetrazine and its salts; and

(5) Lisdexamfetamine.

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

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Secobarbital.

(f) *Hallucinogenic substances:* Nabilone: [Another name for nabilone: (+)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

(g) *Immediate precursors.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:
130 (1) Immediate precursor to amphetamine and methamphetamine:

131 (A) Phenylacetone;

132 (B) Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

135 (2) Immediate precursors to phencyclidine (PCP):

136 (A) 1-phenylethylhexylamine; 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.

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

(b) Narcotic drugs. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and
salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;
(2) Barbital;
(3) Bromazepam;
(4) Camazepam;
(5) Carisoprodol;
(6) Chloral betaine;
(7) Chloral hydrate;
(8) Chlordiazepoxide;
(9) Clobazam;
(10) Clonazepam;
(11) Clorazepate;
(12) Clotiazepam;
(13) Cloxazolam;
(14) Delorazepam;
(15) Diazepam;
(16) Dichloralphenazone;
(17) Estazolam;
(18) Ethchlorvynol;
(19) Ethinamate;
(20) Ethyl loflazepate;
(21) Fludiazepam;
(22) Flunitrazepam; 
(23) Flurazepam; 
(24) Fospropofol; 
(25) Halazepam; 
(26) Haloxazolam; 
(27) Ketazolam; 
(28) Loprazolam; 
(29) Lorazepam; 
(30) Lormetazepam; 
(31) Mebutamate; 
(32) Medazepam; 
(33) Meprobamate; 
(34) Methohexital; 
(35) Methylphenobarbital (mephobarbital); 
(36) Midazolam; 
(37) Nimetazepam; 
(38) Nitrazepam; 
(39) Nordiazepam; 
(40) Oxazepam; 
(41) Oxazolam; 
(42) Paraldehyde; 
(43) Petrichloral; 
(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-yl)-7-methyl-1,4-diazepan-1-yl] [5-methyl-2-(2H-1,2,3-triazol-2-yl)phenyl]methanone).
77  (d) Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible: Fenfluramine and Dexfenfluramine.
83  (e) *Stimulants.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:
88  (1) Cathine ((+)-norpseudoephedrine);
89  (2) Diethylpropion;
90  (3) Fencamfamin;
91  (4) Fenproporex;
92  (5) Mazindol;
(6) Mefenorex;

(7) Modafinil;

(8) Pemoline (including organometallic complexes and chelates thereof);

(9) Phentermine;

(10) Pipradrol;

(11) Sibutramine;

(12) SPA ((-)-1-dimethylamino-1,2-diphenylethane);

(13) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid);

(f) Other substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine;

(2) Butorphanol;

(3) Tramadol (2-[(dimethylamino) methyl]-1-(3-methoxyphenyl) cyclohexanol).

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants. — Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

(d) Any compound, mixture or preparation containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers except products which are for pediatric use primarily intended for administration to children under the age of twelve: Provided, That neither the offenses set
forth in section four hundred one, article four of this chapter, nor the penalties therein, shall be applicable to ephedrine, pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

(e) **Depressants.** — Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

1. Ezogabine \([N-[2\text{-amino-4-94-fluorobenzylamino)-phenyl}]-\text{carbamic acid ethyl ester}]\);
2. Lacosamide \([\text{(R)-2-acetoamido- N -benzyl-3-methoxy-propionamide}]\);
3. Pregabalin \([\text{(S)-3-(aminomethyl)-5-methylhexanoic acid}]\); and
4. Brivaracetam \((\text{(2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide})\) (also referred to as 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.**

(a) Except as otherwise authorized by the provisions of this code, it is unlawful for any person to transport or cause to be transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

1. (1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than $25,000, or both;

2. (2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than ten years, or fined not more than $15,000, or both: Provided, That for the substance marihuana, as scheduled in subdivision (24), subsection (d), section two hundred four, article two of this chapter, the penalty, upon conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this subsection.
(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than $10,000, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one kilogram or more of heroin, five kilograms or more of cocaine or cocaine base, one hundred grams or more of phencyclidine, ten grams or more of lysergic acid diethylamide, or fifty grams or more of methamphetamine or five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than thirty years.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one hundred but fewer than 1000 grams of heroin, not less than five hundred but fewer than 5,000 grams of cocaine or cocaine base, not less than ten but fewer than ninety-nine grams of phencyclidine, not less than one but fewer than ten grams of lysergic acid diethylamide, or not less than five but fewer than fifty grams of methamphetamine or not less than fifty grams but fewer than five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
correctional facility for a determinate sentence of not less than two nor more than twenty years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than ten grams nor more than one hundred grams of heroin, not less than fifty grams nor more than five hundred grams of cocaine or cocaine base, not less than two grams nor more than ten grams of phencyclidine, not less than two hundred micrograms nor more than one gram of lysergic acid diethylamide, or not less than four hundred ninety-nine milligrams nor more than five grams of methamphetamine or not less than twenty grams nor more than fifty grams of a substance or material containing a measurable amount of methamphetamine is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than fifteen years.

(f) The offense established by this section shall be in addition to and a separate and distinct offense from any 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.

(a) Any person who willfully conspires with one or more persons to commit a felony violation of section four hundred one of this article, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than ten years: Provided, That the provisions of this subsection are inapplicable to felony violations of section four hundred one of this article prohibiting the manufacture, delivery or possession with intent to manufacture or deliver marijuana.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver or possess with intent to manufacture or deliver one kilogram or more of heroin, five kilograms or more of cocaine or cocaine base, one hundred grams or more of phencyclidine, ten grams or more of lysergic acid diethylamide, or fifty grams or more of methamphetamine or five hundred grams of a substance or material containing a measurable amount of methamphetamine, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
(c) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver or possess with intent to manufacture or deliver not less than one hundred but fewer than one thousand grams of heroin, not less than five hundred but fewer than one thousand grams of cocaine or cocaine base, not less than ten but fewer than one hundred grams of phencyclidine, not less than one but fewer than ten grams of lysergic acid diethylamide, or not less than five but fifty grams but fewer than five hundred grams of a substance or material containing a measurable amount of methamphetamine, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than twenty years.

(d) Notwithstanding the provisions of subsection (a) of this section, any person who willfully conspires with one or more persons to manufacture, deliver, possess with intent to manufacture or deliver not less than ten grams nor more than one hundred grams of heroin, not less than fifty grams nor more than five hundred grams of cocaine or cocaine base, not less than two grams nor more than ten grams of phencyclidine, not less than two hundred micrograms nor more than one gram of lysergic acid diethylamide, or not less than four hundred ninety-nine milligrams nor more than five grams of methamphetamine or not less than twenty grams nor more than fifty grams of a substance or material containing a measurable amount of methamphetamine, if one or more of such persons does any act to effect the object of the conspiracy, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than fifteen years.
(e) The trier of fact shall determine the quantity of the controlled substance attributable to the defendant beyond a reasonable doubt based on evidence adduced at trial.

(f) The determination of the trier of fact as to the quantity of controlled substance attributable to the defendant in a charge under this section may include all of the controlled substances manufactured, delivered or possessed with intent to deliver or manufacture by other participants or members of the conspiracy.

(g) Offenses in this section proscribing conduct involving lesser quantities are lesser included offenses of offenses proscribing conduct involving larger quantities.

(h) No person may be charged under the provisions of section thirty-one, article ten, chapter sixty-one of this code for conduct that is charged under this section.

(i) Nothing in this section may be construed to place any limitation whatsoever upon alternative sentencing options 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.

(a) Any person who knowingly and willfully delivers a controlled substance or counterfeit controlled substance in violation of the provisions of section four hundred one, article four of this chapter for an illicit purpose and the use, ingestion or consumption of the controlled substance or counterfeit controlled substance alone or in combination with one or more other controlled substances, proximately causes the death of a person using, ingesting or consuming the controlled substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than fifteen years.

(b) Any person who, while engaged in the illegal use of a controlled substance with another, who knowingly fails to seek medical assistance for such other person when the other person suffers an overdose of the controlled substance or suffers a significant adverse physical reaction to the controlled substance and the overdose or adverse physical reaction proximately causes the death of the other person, is guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years.
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.

(a) Whenever a medical services provider dispenses a controlled substance listed in Schedule II, III or IV as established under the provisions of article two of this chapter or an opioid antagonist, or whenever a prescription for the controlled substance or opioid antagonist is filled by:

(i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for outpatient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the Board of Pharmacy pursuant to this article, report the following information, as applicable:
(1) The name, address, pharmacy prescription number and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy or the dispensing physician or dentist;

(2) The full legal name, address and birth date of the person for whom the prescription is written;

(3) The name, address and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III and IV controlled substance or opioid antagonist dispensed;

(5) The quantity and dosage of the Schedule II, III and IV controlled substance or opioid antagonist dispensed;

(6) The date the prescription was written and the date filled;

(7) The number of refills, if any, authorized by the prescription;

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, information about the person picking up the prescription as set forth on the person’s government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the Board of Pharmacy; and

(9) The source of payment for the controlled substance dispensed.

(b) Whenever a medical services provider treats a patient for an overdose that has occurred as a result of illicit or prescribed medication, the medical service provider shall report the full legal name, address and birth date of the person who is being treated, including any known ancillary
evidence of the overdose. The Board of Pharmacy shall coordinate with the Division of Justice and Community Services and the Office of Drug Control Policy regarding the collection of overdose data.

(c) The Board of Pharmacy may prescribe by rule promulgated pursuant to this article the form to be used in prescribing a Schedule II, III and IV substance or opioid antagonist if, in the determination of the Board of Pharmacy, the administration of the requirements of this section would be facilitated.

(d) Products regulated by the provisions of article ten of this chapter shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

(e) Reporting required by this section is not required for a drug administered directly to a patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a patient by a practitioner. The quantity dispensed by a prescribing practitioner to his or her own patient may not exceed an amount adequate to treat the patient for a maximum of seventy-two hours with no greater than two 72-hour cycles dispensed in any fifteen-day period of time.

(f) The Board of Pharmacy shall notify a physician prescribing buprenorphine or buprenorphine/naloxone within sixty days of the availability of an abuse deterrent form of buprenorphine or buprenorphine/naloxone if approved by the Food and Drug Administration as provided in FDA Guidance to Industry. Upon receipt of the notice, a physician may switch their patients using buprenorphine or buprenorphine/naloxone to the abuse deterrent form of the drug.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

(a)(1) The information required by this article to be kept by the Board of Pharmacy is confidential and not subject to
the provisions of chapter twenty-nine-b of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only by inspectors and agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations, duly authorized agents of the Office of Health Facility Licensure and Certification for use in certification, licensure and regulation of health facilities, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners and pharmacists, a dean of any medical school or his or her designee located in this state to access prescriber level data to monitor prescribing practices of faculty members, prescribers and residents enrolled in a degree program at the school where he or she serves as dean, a physician reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses or physician assistant in their employ, and a chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information, and persons with an enforceable court order or regulatory agency administrative subpoena. All law-enforcement personnel who have access to the Controlled Substances Monitoring Program database shall be granted access in accordance with applicable state laws and the Board of Pharmacy’s rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed training approved by the Board of Pharmacy. All information released by the Board of
Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe or dispense controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient: Provided, That the West Virginia Controlled Substances Monitoring Program Database Review Committee established in subsection (b) of this section is authorized to query the database to comply with said subsection.

(2) Subject to the provisions of subdivision (1) of this subsection, the Board of Pharmacy shall also review the West Virginia Controlled Substance Monitoring Program database and issue reports that identify abnormal or unusual practices of patients who exceed parameters as determined by the advisory committee established in this section. The Board of Pharmacy shall communicate with practitioners and dispensers to more effectively manage the medications of their patients in the manner recommended by the advisory committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The Board of Pharmacy shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes, and may be shared with the West Virginia Department of Health and Human Resources for those purposes, as long as the identities of persons or entities and any personally identifiable information, including protected health information, contained therein shall be redacted, scrubbed or otherwise irreversibly destroyed in a manner that will preserve the confidential nature of the information. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information.
The Board of Pharmacy shall establish an advisory committee to develop, implement and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients in this state. This advisory committee shall:

(A) Consist of the following members: A physician licensed by the West Virginia Board of Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed by the West Virginia Board of Osteopathic Medicine, a licensed physician certified by the American Board of Pain Medicine, a licensed physician board certified in medical oncology recommended by the West Virginia State Medical Association, a licensed physician board certified in palliative care recommended by the West Virginia Center on End of Life Care, a pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the West Virginia Academy of Family Physicians, an expert in drug diversion and such other members as determined by the Board of Pharmacy.

(B) Recommend parameters to identify abnormal or unusual usage patterns of controlled substances for patients in order to prepare reports as requested in accordance with subdivision (2) of this subsection.

(C) Make recommendations for training, research and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for the management of opioid addiction.

(D) Monitor the ability of medical services providers, health care facilities, pharmacists and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring Program set forth in section three of
(E) Establish outreach programs with local law enforcement to provide education to local law enforcement on the requirements and use of the Controlled Substances Monitoring Program database established in this article.

(b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the practitioners or dispensers under consideration. The licensing board having jurisdiction over the practitioner or dispenser under consideration shall report back to the Board of Pharmacy regarding any findings, investigation or discipline resulting from the findings of the review committee within thirty days of resolution of any action taken by the licensing board resulting from the information provided by the Board of Pharmacy. The review committee shall also review notices provided by the chief medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-one of this code and determine on a case-by-case basis whether
a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on a number that can be adequately reviewed by the review committee. The information obtained and developed may not be shared except as provided in this article and is not subject to the provisions of chapter twenty-nine-b of this code or obtainable as discovering in civil matters absent a court order.

(c) The Board of Pharmacy is responsible for establishing and providing administrative support for the advisory committee and the West Virginia Controlled Substances Monitoring Program Database Review Committee. The advisory committee and the review committee shall elect a chair by majority vote. Members of the advisory committee and the review committee may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory committee, in accordance with the provisions of article three, chapter twenty-nine-a of this code. The legislative rules must include, but shall not be limited to, the following matters:

(1) Identifying parameters used in identifying abnormal or unusual prescribing or dispensing patterns;
(2) Processing parameters and developing reports of abnormal or unusual prescribing or dispensing patterns for patients, practitioners and dispensers;

(3) Establishing the information to be contained in reports and the process by which the reports will be generated and disseminated; and

(4) Setting up processes and procedures to ensure that the privacy, confidentiality, and security of information collected, recorded, transmitted and maintained by the review committee is not disclosed except as provided in this section.

(e) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program database pursuant to this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database.

(f) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or declining to prescribe or dispense a Schedule II, III or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.

(g) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner’s judgment, may be in violation of section four hundred ten, article four of this chapter, based on information obtained and reviewed from the controlled substances monitoring database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.
(h) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program database except as provided in section five-a of this article.

(i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled Substance Monitoring Program to the Legislative Oversight Commission on Health and Human Resources Accountability with recommendations for needed 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.

(a) All practitioners, as that term is defined in section one hundred one, article two of this chapter who prescribe or dispense Schedule II, III or IV controlled substances shall register with the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database: Provided, That compliance with the provisions of this subsection must be accomplished within thirty days of the practitioner obtaining a new license: Provided, however, That the Board of Pharmacy may renew a practitioner’s license without proof that the practitioner meet the requirements of this subsection.

(b) Upon initially prescribing or dispensing any pain-relieving controlled substance for a patient for whom they are providing pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness and at least annually thereafter should the practitioner or dispenser continue to treat the patient with controlled substances, all persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and, who are licensed by the Board of Medicine as set forth in article three, chapter
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thirty of this code, the Board of Registered Professional
Nurses as set forth in article seven of said chapter, the Board
of Dental Examiners as set forth in article four of said
chapter and the Board of Osteopathic Medicine as set forth
in article fourteen of said chapter shall access the West
Virginia Controlled Substances Monitoring Program
database for information regarding specific patients. The
information obtained from accessing the West Virginia
Controlled Substances Monitoring Program database for the
patient shall be documented in the patient’s medical record
maintained by a private prescriber or any inpatient facility
licensed pursuant to the provisions of chapter sixteen of this
code. A pain-relieving controlled substance shall be defined
as set forth in section one, article three-a, chapter thirty of
this code.

(c) The various boards mentioned in subsection (b) of
this section shall promulgate both emergency and legislative
rules pursuant to the provisions of article three, chapter
twenty-nine-a of this code to effectuate the provisions of
this section.


(a) The Board of Pharmacy may designate certain drugs
as drugs of concern which must be reported to the database
established pursuant to this article. The designation of a
drug of concern shall be reserved for drugs which have a
high potential for abuse. Whenever a medical services
provider dispenses a drug of concern or whenever a
prescription for a drug of concern is filled by: (i) A
pharmacist or pharmacy in this state; (ii) a hospital, or other
health care facility, for outpatient use; or (iii) a pharmacy or
pharmacist licensed by the Board of Pharmacy, but situated
outside this state for delivery to a person residing in this
state, the medical services provider, health care facility,
pharmacist or pharmacy shall, in a manner prescribed by
rules promulgated by the Board of Pharmacy under this
article, report the following information, as applicable:
(1) The name, address, pharmacy prescription number and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy or the dispensing physician or dentist;

(2) The full legal name, address and birth date of the person for whom the prescription is written;

(3) The name, address and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug number of the drug of concern dispensed;

(5) The quantity and dosage of the drug of concern dispensed;

(6) The date the prescription was written and the date filled;

(7) The number of refills, if any, authorized by the prescription;

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, information about the person picking up the prescription as set forth on the person’s government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the Board of Pharmacy; and

(9) The source of payment for the drug of concern dispensed.

(b) The penalties set forth in section seven of this article shall not apply to drugs listed as drugs of concern. Failure to report may be considered a violation of the practice act of the prescriber and may result in discipline by the appropriate licensing board.
(c) The Board of Pharmacy may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to effectuate the 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.
(a) Any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years, fined not more than $10,000, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured and the child thereby suffers serious bodily injury is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than $25,000, or both imprisoned and fined.

(c) As used in subsection (b) of this section, “serious bodily injury” shall have the same meaning as this term is defined in section one, article eight-b, chapter sixty-one of 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-State Real-Time Tracking System shall expire on June 30, 2023.

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**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.

(a) 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, unless the party asserting liability in a proceeding establishes that:

(1) Any provision in the articles of incorporation authorized by subdivision (4), subsection (b), section two hundred two, article two of this chapter or the protections afforded by section eight hundred sixty of this article or article seven-c, chapter fifty-five of this code interposed as a bar to the proceeding by the officer, does not preclude liability; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith; or

(B) A decision: (i) Which the officer did not reasonably believe to be in the best interests of the corporation; or (ii) as to which the officer was not informed to an extent the officer reasonably believed appropriate in the circumstances; or

(C) A lack of objectivity due to the officer’s familial, financial or business relationship with, or a lack of independence due to the officer’s domination or control by, another person having a material interest in the challenged conduct: (i) Which relationship or which domination or control could reasonably be expected to have affected the officer’s judgment respecting the challenged conduct in a manner adverse to the corporation; and (ii) after a reasonable expectation has been established, the officer
does not establish that the challenged conduct was reasonably believed by the officer to be in the best interests of the corporation; or

(D) A sustained failure of the officer to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive officer to the need for inquiry;

(E) Receipt of a financial benefit to which the officer was not entitled or any other breach of the officer’s duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the officer liable:

(1) For money damages, has the burden of establishing that:

(A) Harm to the corporation or its shareholders has been suffered; and

(B) The harm suffered was proximately caused by the officer’s challenged conduct; or

(2) For other money payment under a legal remedy, including compensation for the unauthorized use of corporate assets, has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, including profit recovery by or disgorgement to the corporation, has whatever persuasion burden may be called for to establish that the equitable remedy sought is 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.

(a) There is created within the State Treasury a special revenue fund designated the Court Advanced Technology Subscription Fund to be administered by the West Virginia Supreme Court of Appeals.

(b) The fund shall consist of moneys received from subscribers using the court’s advanced technology systems including, but not limited to, the e-filing system and the Unified Judicial Application Information System.

(c) All moneys deposited into the State Treasury and credited to the Court Advanced Technology Subscription Fund shall be used to pay the costs associated with maintaining and administering the court’s advanced technology systems.

(d) All moneys collected by the administrator of the Supreme Court of Appeals for the use of the court’s advanced technology shall be deposited into the Court Advanced Technology Subscription Fund. Expenditures from the fund shall be for the purposes set forth in subsection (c) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with article three, chapter twelve of this code and upon fulfillment of the requirements of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.
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.

(a) The circuit court shall have supervision and control of all proceedings before magistrates, by mandamus, prohibition and certiorari.

(b) Except in cases confined exclusively by the Constitution to some other tribunal, the circuit court shall have original and general jurisdiction of all matters at law where the amount in controversy, excluding interest, exceeds $7,500: Provided, That the jurisdictional limit on amounts in controversy does not apply to real estate installment sales contracts.

(c) The circuit court shall have original and general jurisdiction in all of the following matters:

(1) Habeas corpus;
(2) Mandamus;

(3) Quo warranto;

(4) Prohibition;

(5) Crimes; and

(6) Misdemeanors.

(d) The circuit court shall have original and general jurisdiction in all cases in equity, including jurisdiction in equity to remove any cloud on the title to real property, or any part of a cloud, or any estate, right or interest in the real property, and to determine questions of title with respect to the real property without requiring allegations or proof of actual possession of the real property.

(e) The circuit court shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal.

(f) The circuit court shall also have any other jurisdiction, whether supervisory, original, appellate or concurrent, as is or may be prescribed by law.

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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 custodians 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.

(a) For purposes of this section:

(1) “Prosecuting attorney” means a prosecuting attorney, assistant prosecuting attorney or duly appointed special prosecuting attorney.

(2) “Investigator” means an investigator employed by a prosecuting attorney’s office or an employee of a state agency authorized by the provisions of this code to perform criminal investigations. For purposes of this definition, state agency shall include a legislative committee, commission or entity authorized by the provisions of this code to perform criminal investigations.
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(3) “Law-enforcement officer” shall have the same meaning as is set forth in section one, article twenty-nine, chapter thirty of this code: Provided, That for purposes of this section, “law-enforcement officer” shall also include those individuals meeting the definition of “chief executive” set forth in section one, article twenty-nine, chapter thirty of this code.

(4) “Subpoenaed material” means books, records, documents, papers, computers, laptops, computer hard drives, electronic records, including, but not limited to, emails, electronic files, electronic documents, metadata or any other thing in any form in which it may exist.

(b) Notwithstanding any provision of this code to the contrary, material subpoenaed and received by a prosecuting attorney pursuant to a grand jury subpoena may thereafter, in the discretion of the prosecuting attorney, be delivered to a designated law-enforcement officer or investigator. Upon receipt from the prosecuting attorney, the designated law-enforcement officer or investigator may keep, review and analyze the subpoenaed materials and otherwise use the subpoenaed materials for investigative purposes.

(c) Prior to providing subpoenaed material to a designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, the prosecuting attorney shall prepare and have the designated law-enforcement officer or investigator execute a nondisclosure statement acknowledging the existence and content of the subpoenaed material is secret under Rule 6(e) of the West Virginia Rules of Criminal Procedure. The prosecuting attorney shall file all nondisclosure statements, under seal, with the clerk of the circuit court. The existence or contents of any subpoenaed material subject to the provisions of this section may only be disclosed to another law-enforcement officer or investigator for investigative purposes with the prior written authorization of the prosecuting attorney and
the receiving law-enforcement officer’s or investigator’s execution of a nondisclosure statement.

(d) The designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, may, in the discretion of the prosecuting attorney, retain the subpoenaed material or other evidence in his or her possession, care, custody or control until the termination of the investigation or presentation of the subpoenaed matter 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.

(a) If any person maliciously shoots, stabs, cuts or wounds any person, or by any means cause him or her bodily injury with intent to maim, disfigure, disable or kill,
he or she, except where it is otherwise provided, is guilty of a felony and, upon conviction thereof, shall be punished by confinement in a state correctional facility not less than two nor more than ten years. If the act is done unlawfully, but not maliciously, with the intent aforesaid, the offender is guilty of a felony and, upon conviction thereof, shall either be imprisoned in a state correctional facility not less than one nor more than five years, or be confined in jail not exceeding twelve months and fined not exceeding $500.

(b) Assault. — Any person who unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act that places another in reasonable apprehension of immediately receiving a violent injury is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months or fined not more than $100, or both fined and confined.

(c) Battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature to the person of another or unlawfully and intentionally causes physical harm to another person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than twelve months or fined not more than $500, or both fined and confined.

(d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in the ten years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of this section where the victim was a current or former spouse, current or former sexual or intimate partner, a person with whom the defendant has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or guardian or the defendant’s child or ward at the time of the offense or convicted of a violation of section twenty-eight of this article or has served a period of pretrial diversion for an alleged violation of subsection (b) or (c) of this section or section twenty-eight of this article when the victim has a present or past relationship, upon conviction, is subject to

(a) Domestic battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature with his or her family or household member, or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than twelve months or fined not more than $500, or both fined and confined.

(b) Domestic assault. — Any person who unlawfully attempts to commit a violent injury against his or her family or household member, or unlawfully commits an act that places his or her family or household member in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months or fined not more than $100, or both fined and confined.

(c) Second offense. — Domestic assault or domestic battery.

A person convicted of a violation of subsection (a) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article, where the victim was his or her current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter.
for a violation of subsection (a) or (b) of this section, or a violation of subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than sixty days nor more than one year or fined not more than $1,000, or both fined and confined.

A person convicted of a violation of subsection (b) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article, where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense or having previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense shall be confined in jail for not less than thirty days nor more than six months or fined not more than $500, or both fined and confined.
(d) Any person who has been convicted of a third or subsequent violation of the provisions of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of section nine of this article or subsection (a), section fourteen-g of this article, where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or a violation of the provisions of section nine of this article or subsection (a), section fourteen-g of this article in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense, or any combination of convictions or diversions for these offenses, is guilty of a felony if the offense occurs within ten years of a prior conviction of any of these offenses and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than five years or fined not more than $2,500, or both fined and confined.

(e) As used in this section, “family or household member” means “family or household member” as defined in section two hundred four, article twenty-seven, chapter forty-eight of this code.

(f) A person charged with a violation of this section may not also be charged with a violation of subsection (b) or (c), section nine of this article for the same act.

(g) No law-enforcement officer may be subject to any civil or criminal action for false arrest or unlawful detention
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.

(a) For purposes of this section:
(1) “Government representative” means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

(2) “Health care worker” means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician’s office, clinic or outpatient treatment facility.

(3) “Emergency service personnel” means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

(4) “Utility worker” means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative or interstate pipeline.

(5) “Law-enforcement officer” has the same definition as this term is defined in W.Va. Code §30-29-1, except for purposes of this section, “law-enforcement officer” shall additionally include those individuals defined as “chief executive” in W.Va. Code §30-29-1.

(6) “Correctional employee” means any individual employed by the West Virginia Division of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile Services and an employee of an entity providing services to incarcerated, detained or housed persons pursuant to a contract with such agencies.

(b) Malicious assault. — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a government representative, health care worker, utility
worker, emergency service personnel, correctional
employee or law-enforcement officer acting in his or her
official capacity, and the person committing the malicious
assault knows or has reason to know that the victim is acting
in his or her official capacity is guilty of a felony and, upon
conviction thereof, shall be confined in a correctional
facility for not less than three nor more than fifteen years.

(c) *Unlawful assault.* — Any person who unlawfully but
not maliciously shoots, stabs, cuts or wounds or by any
means causes a government representative, health care
worker, utility worker, emergency service personnel,
correctional employee or law-enforcement officer acting in
his or her official capacity bodily injury with intent to maim,
disfigure, disable or kill him or her and the person
committing the unlawful assault knows or has reason to
know that the victim is acting in his or her official capacity
is guilty of a felony and, upon conviction thereof, shall be
confined in a correctional facility for not less than two nor
more than five years.

(d) *Battery.* — Any person who unlawfully, knowingly
and intentionally makes physical contact of an insulting or
provoking nature with a government representative, health
care worker, utility worker, emergency service personnel,
correctional employee or law-enforcement officer acting in
his or her official capacity and the person committing the
battery knows or has reason to know that the victim is acting
in his or her official capacity, or unlawfully and
intentionally causes physical harm to that person acting in
such capacity and the person committing the battery knows
or has reason to know that the victim is acting in his or her
official capacity, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than $500 or
confined in jail not less than one month nor more than
twelve months or both fined and confined. If any person
commits a second such offense, he or she is guilty of a
felony and, upon conviction thereof, shall be fined not more
than $1,000 or imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

(e) **Assault.** — Any person who unlawfully attempts to commit a violent injury to the person of a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer, acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully commits an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months, fined not more than $200, or both fined and confined.

(f) Any person convicted of any crime set forth in this section who is incarcerated in a facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail Authority, or is in the custody of the Division of Juvenile Services and is at least eighteen years of age or subject to prosecution as an adult, at the time of committing the offense and whose victim is a correctional employee may not be sentenced in a manner by which the sentence would run concurrent with any other sentence being served at the time the offense giving rise to the conviction of a crime set forth in this section was committed.
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.

(a) Any person who unlawfully takes custody of, conceals, confines or restrains another person against his or her will by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation or enticement with the intent:

(1) To hold another person for ransom, reward or concession;

(2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or

(3) To use another person as a shield or hostage, is guilty of a felony and, upon conviction, shall be punished by
confinement by the Division of Corrections for life, and, notwithstanding the provisions of article twelve, chapter sixty-two of this code, is not eligible for parole.

(b) The following exceptions apply to the penalty contained in subsection (a):

(1) A jury may, in their discretion, recommend mercy, and if the recommendation is added to their verdict, the person is eligible for parole in accordance with the provisions of article twelve, chapter sixty-two of this code;

(2) If the person pleads guilty, the court may, in its discretion, provide that the person is eligible for parole in accordance with the provisions of article twelve, chapter sixty-two of this code and, if the court so provides, the person is eligible for parole in accordance with the provisions of said article in the same manner and with like effect as if the person had been found guilty by the verdict of a jury and the jury had recommended mercy;

(3) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom, money or other thing, or any concession or advantage of any sort has been paid or yielded, the punishment shall be confinement by the Division of Corrections for a definite term of years not less than twenty nor more than fifty; or

(4) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be confinement by the Division of Corrections for a definite term of years not less than ten nor more than thirty.
(c) For purposes of this section, “to use another as a hostage” means to seize or detain and threaten to kill or injure another in order to compel a third person or a governmental organization to do, or abstain from doing, any legal act as an explicit or implicit condition for the release of the person detained.

(d) Notwithstanding any other provision of this section, if a violation of this section is committed by a family member of a minor abducted or held hostage and he or she is not motivated by monetary purposes, but rather intends to conceal, take, remove the child or refuse to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child’s interest to do so, he or she is guilty of a felony and, upon conviction thereof, be confined in a correctional facility for not less than one nor more than five years or fined not more than $1,000, or both confined and fined.

(e) Notwithstanding any provision of this code to the contrary, where a law-enforcement agency of this state or a political subdivision thereof receives a complaint that a violation of the provisions of this section has occurred, the receiving law-enforcement agency shall notify any other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the State Police and each agency so notified, shall cooperate in the investigation forthwith.

(f) It is a defense to a violation of subsection (d) of this section, that the accused’s action was necessary to preserve the welfare of the minor child and the accused promptly reported his or her actions to a person with lawful custody of the minor, to law enforcement or to the Child Protective Services Division of the Department of Health and Human 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. Any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of $2,000 or more with the intent to sell,
trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than one nor more than ten years or be fined not less than $1,000 nor more than $10,000, or both imprisoned and fined.

(b) Notwithstanding the provisions of subsection (a) of this section any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of $10,000 or more with the intent to sell, trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than two nor more than twenty years fined not less than $2,000 nor more than $25,000, or both imprisoned and fined.

(c) Any person who purchases, trades or barters for, or otherwise obtains with any form of consideration, merchandise from persons he knows or has reason to believe was obtained by three or more persons engaged in a common scheme or plan to violate the provisions of section one of this article shall be guilty of a felony.

(d) Any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of $2,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than one year, nor more than ten years or fined not less than $1,000 nor more than $10,000, or both imprisoned and fined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of $10,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than two years, nor more than twenty years or fined not less
than $2,000 nor more than $25,000, or both imprisoned and
fined.

(f) In determining the value of merchandise in a
prosecution under this section, it is permissible to cumulate
the value of merchandise obtained as part of a common
scheme or plan.

(g) Violations of subsections (a), (b) and (c) of this
section occurring in one or more counties of this state may
be prosecuted in any county wherein any part of the offense
was committed and the provisions of subsection (f) of this
section are applicable to offenses so occurring.

(h)(1) Any interest a person has acquired or maintained
in any cash, asset or other property of value in any form,
derived in part or total from any proceeds obtained from
participating in a violation of this section, may be seized and
forfeited consistent with the procedures in the West Virginia
Contraband Forfeiture Act, as provided in article seven,
chapter sixty-a of this code.

(2) Notwithstanding subdivision (1) of this subsection,
at sentencing for a violation of this section, the court may
direct disgorgement to the victim or victims of any cash,
asset or other property of value in any form, derived in part
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.

(a) As used in this section:

(1) “Disclose” means to publish, publicly display, distribute, deliver, circulate or disseminate by any means, including, but not limited to, electronic transmission.

(2) “Image” means a photograph, videotape, motion picture film, digital recording or any product of any mechanical or electronic recording process or device that can preserve, for later viewing, a visual image.

(3) “Intimate parts” means a person’s genitalia, pubic area, anus or female post-pubescent breasts.

(4) To “publicly disclose” means to disclose an image to one or more persons other than those persons whom the person depicted understood would view the image at the time it was captured.

(b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten to disclose, with
the intent to harass, intimidate, threaten, humiliate,
embarrass, or coerce, an image of another which shows the
intimate parts of the depicted person or shows the depicted
person engaged in sexually explicit conduct which was
captured under circumstances where the person depicted
had a reasonable expectation that the image would not be
publicly disclosed.

(c) (1) A person convicted of a violation of subsection
(b) of this section is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail for not more
than one year, fined not less than $1,000 nor more than
$5,000, or both confined and fined.

(2) Notwithstanding the provisions of subdivision (1) of
this subsection, a person convicted of a second or
subsequent violation of subsection (b) of this section is
guilty of a felony and, upon conviction thereof, shall be
imprisoned in a state correctional facility for not more than
three years, fined not less than $2,500 nor more than
$10,000, or both imprisoned and fined.

(d) The provisions of this section do not apply to:

(1) Images disclosed with the prior written consent of
the person depicted;

(2) Images depicting the person voluntarily exposing
himself or herself in a public or commercial setting; or

(3) Disclosures made through the reporting of illegal
conduct or the lawful and common practices of law
enforcement, criminal reporting, legal proceeding or
medical treatment.

(e) Nothing in this section shall be construed to impose
liability on the provider of an interactive computer service
as defined by 47 U. S. C. §230(f)(2), an information service
as defined by 47 U. S. C. §153(24), or telecommunications
service as defined by 47 U. S. C. §153(53), for content
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.

The amendments made to this article during the 2017 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.

(a) If any parent, guardian or custodian maliciously and intentionally inflicts upon a child under his or her care, custody or control substantial physical pain, illness or any impairment of physical condition by other than accidental
means, thereby causing the death of such child, then such
parent, guardian or custodian is guilty of a felony.

(b) If any parent, guardian or custodian knowingly
allows any other person to maliciously and intentionally
inflict upon a child under the care, custody or control of such
parent, guardian or custodian substantial physical pain,
illness or any impairment of physical condition by other
than accidental means, which thereby causes the death of
such child, then such other person and such parent, guardian
or custodian are each guilty of a felony.

(c) Any person convicted of a felony described in
subsection (a) or (b) of this section shall be imprisoned in a
state correctional facility for a period of fifteen years to life.
A person imprisoned pursuant to the provisions of this
section is not eligible for parole prior to having served a
minimum of fifteen years of his or her sentence.

(d) The provisions of this section are not applicable to
any parent, guardian or custodian or other person who,
without malice, fails or refuses, or allows another person to,
without malice, fail or refuse, to supply a child under the
care, custody or control of such parent, guardian or
custodian with necessary medical care, when such medical
care conflicts with the tenets and practices of a recognized
religious denomination or order of which such parent,
guardian or custodian is an adherent or member. The
provisions of this section are not applicable to any health
care provider who fails or refuses, or allows another person
to fail or refuse, to supply a child with necessary medical
care when such medical care conflicts with the tenets and
practices of a recognized religious denomination or order of
which the parent, guardian or custodian of the child is an
adherent or member, or where such failure or refusal is
pursuant to a properly executed do not resuscitate form.
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 to establish a procedure whereby individuals convicted of certain criminal offenses may, pursuant to the provisions of this article, obtain a reduced offense of conviction. In enacting this article, it is also the Legislature’s intent to improve the employment possibilities of certain persons while allowing the public notice of their actual conduct and prior transgressions without further penalty or diminution of employment opportunities.


1 (a) As used in this article, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise:

4 (1) “Criminal offense reduction” means the reduction of a qualifying felony offense to a misdemeanor offense pursuant to this article.

7 (2) “Excluded offense” means:

8 (A) An offense which involves the infliction of serious physical injury;
(B) A sexual offense, including, but not limited to, a violation of the felony provisions of article eight, eight-b, eight-c or eight-d of this chapter;

(C) An offense which involves the use or exhibition of a deadly weapon or dangerous instrument;

(D) A felony violation of the provisions of section nine, article two of this chapter;

(E) A felony violation of the provisions of section twenty-eight, article two of this chapter;

(F) A felony violation of article four, chapter seventeen-b of this code; or

(G) A felony, the facts and circumstances of which the circuit court finds to be inconsistent with the purposes of this article.

(3) “Nonviolent felony” means a felony conviction in a circuit court of this state, which the circuit court finds is not:

(i) An excluded offense as defined in subdivision (2) of this article; and

(ii) which does not involve violence or potential violence to another person or the public.

(4) “Petitioner” means a person who has filed a petition seeking a criminal offense reduction under the provisions of this article.

(5) “Qualifying felony offense” means a nonviolent felony offense that is not excluded from relief under this article.

(6) “Reduced misdemeanor” means a legal status representing that a person previously convicted of a nonviolent qualifying felony has successfully petitioned a circuit court to have the felony conviction reduced to the status of a misdemeanor.
(7) “Requisite time period” means ten years after completion of any sentence or period of supervision or probation, whichever is later, during which time there has been no commission and conviction for a violation of law by the petitioner other than for a minor traffic offense.


(a) Subject to the limitations and procedures set forth in this article, a person convicted of a nonviolent felony offense may seek a criminal offense reduction by petition to the circuit court. If granted, the petitioner’s felony conviction shall be vacated and the petitioner’s status will thereafter be designated on all records relating to the offense as a “reduced misdemeanor”. The petitioner’s criminal record shall also reflect that he or she be granted such legal status as is associated with being convicted of a misdemeanor and, except as provided by the provisions of this article, the person shall not be deemed to have been convicted of a felony for any legal purpose or restriction.

(b) Notwithstanding any provision of law to the contrary, the reduced misdemeanor provided for under this article may not be expunged as part of this petition or by subsequent legal proceeding or petition.

(c) There shall be no entitlement to a criminal offense reduction and the granting of the petition shall remain in the discretion of the circuit court.

(d) Nothing in the section may be construed to allow a person obtaining relief pursuant to this article to be eligible for reinstatement of any retirement or employment benefit which he or she lost or forfeited due to the felony conviction or convictions vacated and reduced to the status of a misdemeanor.


(a) A person seeking a criminal offense reduction under this article shall file with the circuit court a petition, in a
form and manner set forth by the West Virginia Supreme Court of Appeals.

(b) Any person filing a petition pursuant to the provisions of this article shall pay the filing fee set by the provisions of subdivision (1), subsection (a), section eleven, article one, chapter fifty-nine of this code: Provided, That in addition to the fee required by the provisions of this subsection a petitioner shall pay a fee of $100 which shall be deposited into a nonappropriated special revenue account within the State Treasurer’s office to be known as the West Virginia State Police Criminal History Account, said fee to be used to offset costs to the State Police for actions to facilitate the operation of this article.

(c) Each petition for criminal offense reduction filed pursuant to this section shall be verified under oath and include the following information:

(1) Petitioner’s current name and all other legal names or aliases by which the petitioner has been known at any time;

(2) All of petitioner’s addresses from the date of the offense for which a criminal offense reduction order is sought to the date of the filing of the petition;

(3) Petitioner’s date of birth and Social Security number;

(4) Petitioner’s date of arrest, the court of jurisdiction and criminal case number;

(5) The offense or offenses with which petitioner was charged and of which petitioner was convicted and the statutory citations therefor;

(6) The names of any victim or victims, or where there are no identifiable victims such shall be stated;
(7) Whether there is any current order for restitution, protection, restraining order or other no-contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for restitution, protection or restraining order prohibiting the petitioner from contacting the victim. If there is such a current order, petitioner shall attach a copy of that order to his or her petition;

(8) The court’s disposition of the matter and sentence imposed;

(9) The reasons a criminal offense reduction is sought, such as, but not limited to, employment or licensure purposes, and arguments in support thereof;

(10) The date upon which he or she completed any sentence or period of supervision or probation;

(11) An express averment by the petitioner that he or she has neither committed nor been convicted of a violation of law;

(12) The action the petitioner has taken since the time of the offense or offenses toward personal rehabilitation, including treatment, work or other personal history that demonstrates rehabilitation;

(13) Whether petitioner has ever been granted criminal offense reduction, expungement or similar relief regarding a criminal conviction by any court in this state, any other state or by any federal court; and

(14) Any supporting documents, sworn statements, affidavits or other information supporting the petition to reduce criminal offense.

(d) A copy of the petition, with any supporting documentation, shall be served by petitioner pursuant to the West Virginia Rules of Civil Procedure upon the Superintendent of the State Police; the prosecuting attorney
of the county of conviction; the chief of police or other
executive head of the municipal police department wherein
the offense was committed; the chief law-enforcement
officer of any other law-enforcement agency which
participated in the arrest of the petitioner; the circuit court
of conviction, if the petition is filed in another circuit; the
superintendent or warden of any state correctional facility
in which the petitioner was imprisoned; and any state and
local government agencies the records of which would be
affected by the proposed criminal offense reduction.

(e) The prosecuting attorney of the county in which the
petition is filed shall serve by first class mail the petition for
criminal offense reduction, accompanying documentation
and any proposed criminal offense reduction order to any
identified victims.

(f) Upon receipt of a petition for criminal offense
reduction, the Superintendent of the State Police, the
prosecuting attorney of the county of conviction, the chief
of police or other executive head of the municipal police
department wherein the offense was committed, the chief
law-enforcement officer of any other law-enforcement
agency which participated in the arrest of the petitioner, the
superintendent or warden of any institution in which the
petitioner was confined, the circuit court of conviction, if
the petition is filed in another circuit, any state and local
government agencies the records of which would be
affected by the proposed criminal offense reduction and any
interested individual or agency that desires to oppose the
criminal offense reduction shall, within thirty days of
receipt of the petition, file a notice of opposition with the
court with supporting documentation and sworn statements
setting forth the reasons for resisting the petition for
criminal offense reduction. A copy of any notice of
opposition with supporting documentation and sworn
statements shall be served upon the petitioner or his or her
counsel in accordance with West Virginia Rules of Civil
Procedure. The petitioner may file a reply no later than
fifteen days after service of any notice of opposition to the petition for criminal offense reduction.

(g) The burden of proof shall be on the petitioner to prove by clear and convincing evidence that:

(1) The conviction or convictions for which criminal offense reduction is sought are qualifying offenses and are the only convictions against petitioner;

(2) That the requisite time period has passed since the conviction or convictions or end of the completion of any sentence of incarceration or probation;

(3) That the petitioner has neither committed nor been convicted of a violation of law in the preceding ten years;

(4) That petitioner has no criminal charges pending against him or her;

(5) That the criminal offense reduction is consistent with the public welfare;

(6) That petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and has remained law-abiding; and

(7) Any other matter deemed appropriate or necessary by the court to make a determination regarding the petition for criminal offense reduction.

(h) Within one hundred eighty days of the filing of a petition for criminal offense reduction or as soon thereafter as is practicable the circuit court shall:

(1) Summarily grant the petition;

(2) Set the matter for hearing; or

(3) Summarily deny the petition, if the court determines that the petition is insufficient, or based upon supporting documentation and sworn statements filed in opposition to
the petition, the court determines that the petitioner, as a matter of law, is not entitled to reduction.

(i) If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner's arrest, conviction, sentence and post-conviction supervision, including any record of arrest or conviction in any other state or federal court. The court may hear testimony of witnesses and evidence of any other matter the court deems proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for criminal offense reduction with appropriate findings of fact and conclusions of law.

(j) If the court grants the petition for criminal offense reduction, it shall order any records in the custody of the court, and of any other agency or official, including law-enforcement records, to reflect reduction of the felony offense to the status of reduced misdemeanor. Every agency with records relating to the arrest, charge or other matters arising out of the arrest or conviction that is ordered to reflect the criminal offense reduction in its records shall certify to the court within ninety days of the entry of the criminal offense reduction order that the required reduction has been completed: Provided, That upon inquiry by a prospective employer or on an application for employment, credit or other type of application, he or she shall disclose the existence of the reduced misdemeanor and acknowledgement of the prior conviction if asked about prior convictions or crimes.

(k) Upon granting of criminal offense reduction, the person whose felony offense has been reduced under the provisions of this article shall not have to disclose the fact
of the record or any matter relating thereto on an application for employment, credit or other type of application that he or she has a felony conviction.

§61-11B-5. Employer protections.

(a) A cause of action may not be brought against an employer, general contractor, premises owner or other third party solely based on the employer, general contractor, premises owner or other third party employing a person or independent contractor who has been convicted of a nonviolent, nonsexual offense or a person who has had his or her conviction reduced pursuant to this article.

(b) In a negligent hiring action against an employer, general contractor, premises owner or other third party for the acts of an employee or independent contractor that is based on a theory of liability other than that described by subsection (a) of this section, the fact that the employee or independent contractor was convicted of a nonviolent, nonsexual offense or had his or her conviction reduced pursuant to this article before the employee or independent contractor’s employment or contractual obligation with the employer, general contractor, premises owner or other third party, as applicable, may not be introduced into evidence.

(c) This section does not preclude any existing cause of action for failure of an employer or other person to provide adequate supervision of an employee or independent contractor, except that the fact that the employee or independent contractor has been convicted of a nonviolent, nonsexual criminal offense or had his or her conviction reduced pursuant to this article may be introduced into evidence in the suit only if the employer:

(1) Knew of the conviction or was grossly negligent in not knowing of the conviction or reduced offense; and

(2) The conviction or reduced offense was directly related to the nature of the employee’s or independent
contractor’s work and the conduct that gave rise to the
alleged injury that is the basis of the suit.

(d) This section shall not be interpreted as implying a
cause of action exists for negligent hiring of a person based
upon his or her criminal record in factual situations not
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.


As used in this article, unless the context clearly indicates otherwise:

(1) “Conducts” includes, but is not limited to, initiating, concluding, participating in, or assisting in a transaction.

(2) “Criminal activity” means a violation of:

(A) The felony provisions of section eleven, article forty-one, chapter thirty-three of this code;

(B) Felony violations of chapter sixty-a of this code;

(C) Felony violations of article two of this chapter;

(D) The provisions of sections one, two, three, four, five, eleven, twelve, subsection (a), section thirteen, fourteen, eighteen, nineteen, twenty, twenty-a, twenty-two, twenty-four, twenty-four-a, twenty-four-b and twenty-four-d, article three of this chapter;

(E) Felony provisions of article three-c, three-e and four of this chapter;

(F) The provisions of section eight, article eight of this chapter; and

(G) The felony provisions of articles eight-a, eight-c and fourteen of this chapter.

(3) “Cryptocurrency” means digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, and which operate independently of a central bank.

(4) “Financial institution” means a financial institution as defined in 31 U.S.C. §5312 which institution is located in this state.
(5) “Financial transaction” means a transaction which effects intrastate, interstate or foreign commerce, and:

(A) Involves the movement of funds by wire or other means;

(B) Involves the use of a monetary instrument;

(C) Involves the transfer of title to real or personal property; or

(D) Involves the use of a financial institution which is engaged in, or the activities of which effect intrastate, interstate or foreign commerce.

(6) “Gift card” means a card, voucher or certificate which contains or represents a specific amount of money issued by a retailer or financial institution to be used as an alternative to cash purposes.

(7) “Knowing” means actual knowledge. For purposes of this article, a person may be considered to have actual knowledge if the belief is based upon representations of a law-enforcement officer engaged in his or her official duties while acting in an undercover capacity or a person acting at the direction of a law-enforcement officer engaged in his or her official duties.

(8) “Monetary instruments” means coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, gift cards, prepaid credit cards, money orders, cryptocurrency, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(9) “Proceeds” means property or monetary instrument acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission and includes property, real or personal, of any kind.
(10) “Property” means anything of value, and includes any interest therein, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, and monetary instruments.

(11) “Transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, “transaction” includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through or to a financial institution, by whatever means effected.


(a) It is unlawful for any person to conduct or attempt to conduct a financial transaction involving the proceeds of criminal activity knowing that the property involved in the financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity:

(1) With the intent to promote the carrying on of the criminal activity; or

(2) Knowing that the transaction is designed in whole or part:

(i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of the criminal activity; or

(ii) To avoid any transaction reporting requirement imposed by law.

(b) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction is less than $1,000 is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than one year or fined not more than $1,000, or both confined and fined.
(c) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction is not less than $1,000 nor more than $20,000 is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than five years, or fined not less than $1,000 nor more than $10,000, or both imprisoned and fined.

(d) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction in excess of $20,000 is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than two nor more than ten years, or fined not less than $5,000 nor more than $25,000, or both imprisoned and fined.


(a) Any property or monetary instruments involved in a violation of this article, and any property or monetary instruments traceable to the violation, may be seized and forfeited consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code: Provided, That in any forfeiture proceeding pursuant to this section, the burden of proof shall be by clear and convincing evidence.

(b) Notwithstanding subsection (a) of this section, the court, as part of sentencing for a violation under this article, may direct the disgorgement to a victim of any property or monetary instruments involved in the violation and any property or monetary instruments traceable to the violation.


(a) Notwithstanding any other provision to the contrary, each transaction committed in violation of this article 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.


As used in this article, unless the context in which used clearly requires otherwise, the following terms have the meanings indicated:

(a) “Aggrieved person” means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(b) “Child care center” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private,
that is licensed by Department of Health and Human Resources for the care of children in any setting.

(c) “Communications common carrier” means any telegraph company or telephone company and any radio common carrier.

(d) “Contents” when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

(e) “Electronic, mechanical or other device” means any device or apparatus: (i) Which can be used to intercept a wire, oral or electronic communication; or (ii) the design of which renders it primarily useful for the surreptitious interception of any such communication. There is excepted from this definition:

(1) Any telephone or telegraph instrument, equipment or facility or any component thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business; or (b) being used by a communications common carrier in the ordinary course of its business or by an investigative or law-enforcement officer in the ordinary course of his or her duties; or

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal; or

(3) Any device used in a lawful consensual monitoring including, but not limited to, tape recorders, telephone induction coils, answering machines, body transmitters and pen registers.

(f) “Intercept” means the aural or other acquisition of the contents of any wire, electronic or oral communication
through the use of any electronic, mechanical or other
device.

(g) “Designated judge” means a circuit court judge
designated by the Chief Justice of the West Virginia
Supreme Court of Appeals to hear and rule on applications
for the interception of wire, oral or electronic
communications.

(h) “Investigative or law-enforcement officer” means a
member or members of the West Virginia State Police who
is or are empowered by law to conduct investigations of or
to make arrest for offenses enumerated in this chapter.

(i) “Oral communication” means any oral
communication uttered by a person exhibiting an
expectation that the communication is not subject to
interception under circumstances justifying the expectation.
The term does not include:

(A) An electronic communication; or

(B) An oral communication uttered in any child care
center where there are written notices posted informing
persons that their oral communications are subject to being
intercepted.

(j) “Pen register” means a device which records or
decodes electronic or other impulses which identify the
numbers dialed or otherwise transmitted on the telephone
line to which the device is attached, but the term does not
include any device used by a provider or customer of a wire
or electronic communication service for billing, or
recording as an incident to billing, for communications
services provided by the provider or any device used by a
provider or customer of a wire communication service for
cost accounting or other like purposes in the ordinary course
of its business.

(k) “Person” means any person, individual, partnership,
association, joint stock company, trust or corporation and
includes any police officer, employee or agent of this state or of a political subdivision thereof.

(l) “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of the connection in a switching station) furnished or operated by any person engaged in providing or operating the facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of the communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(m) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electro-magnetic, photoelectron or photooptical system but does not include:

(1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) Any wire or oral communication; or

(3) Any combination made through a tone-only paging device.

(n) “User” means any person or entity who or which uses an electronic communication service and is duly authorized by the provider of the service to engage in the use.

(o) “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any
computer facilities or related electronic equipment for the
electronic storage of the communications.

(p) “Electronic communication service” means any
service which provides to users thereof the ability to send or
receive wire or electronic communications.

(q) “Aural transfer” means a transfer containing the
human voice at any point between and including the point
of origin and the point of reception.

(r) “Trap and trace device” means a device which
captures the incoming electronic or other impulses which
identify the originating number of an instrument or device
from which a wire or electronic communication was
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.

The clerk of a court in which a person is sentenced to serve a period of incarceration in a state correctional facility shall transmit to the Commissioner of the Division of Corrections and the West Virginia Regional Jail Authority a certified commitment order same as, or similar to, the form provided in this section. If a commitment order in a form other than the one provided in this section is issued, the commitment order is required, at a minimum, to contain the same information.

IN THE CIRCUIT COURT OF
____________________COUNTY, WEST VIRGINIA

State of West Virginia

v. circuit court Case No.___________________

Defendant: ______________________________

DOB: ________________ SSN: XXX-XX-______

Gender: _____Male/______Female

WEST VIRGINIA DIVISION OF CORRECTIONS
CERTIFIED COMMITMENT ORDER

On the _____ day of __________________, 20___, the State of West Virginia, by ____________________, and the defendant appeared in person and with counsel,______________________________.

The defendant has been convicted of the following offense(s):

____________________________________________
The defendant is committed to the custody of the Commissioner of Corrections for a period of:

_______________________________________________.

Conviction Date: __________ Sentence Date: __________

Effective Sentence Date: _______ Resentence Date: _________

Consecutive to: ____ Concurrent with:

_______________________________________________

Credit for Jail/Prison Time Served: ______days  Credit for Home Incarceration: ______days

Credit for Home Incarceration Parole: ______days Other NonPenal Credit: ________days

Additionally, the court finds:

_______________________________________________

The defendant shall be transported to and held in a West Virginia Regional Jail Authority facility until transfer into the physical custody of the Commissioner. The court further orders that the cost of incarceration in the regional jail pending transfer shall be paid by the Commissioner from the date of entry of this order forward.

Special Instructions: ______________________________

It is further ordered that the Circuit Clerk shall forthwith transmit a certified copy of this commitment order to the West Virginia Regional Jail Authority and to the Central Office Inmate Records Manager of the Division of Corrections by facsimile at (fax number) or by mail at (street address).

Enter this _____day of __________, 2____.

Circuit Judge
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.


1 (a) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant in a home incarceration program has violated the terms and conditions of the circuit court’s home incarceration order, he or she is subject to the procedures and penalties set forth in section ten, article twelve of this chapter.

8 (b) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant sentenced to home incarceration by the circuit
court has violated the terms and conditions of the court’s order of home incarceration and the participant’s participation was imposed as an alternative sentence to another form of incarceration, the participant is subject to the same procedures involving confinement and revocation as would a probationer charged with a violation of the order of home incarceration. Any participant under an order of home incarceration is subject to the same penalty or penalties, upon the circuit court’s finding of a violation of the order of home incarceration, as he or she could have received at the initial disposition hearing: Provided, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

(c) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant sentenced to home incarceration by a magistrate has violated the terms and conditions of the magistrate’s order of home incarceration as an alternative sentence to incarceration in jail, the supervising authority may arrest the participant and take the offender before a magistrate within the county of the offense. The magistrate shall then conduct a prompt and summary hearing on whether the participant’s home incarceration should be revoked. If it appears to the satisfaction of the magistrate that any condition of home incarceration has been violated, the magistrate may revoke the home incarceration and order that the sentence of incarceration in jail be executed. Any participant under an order of home incarceration is subject to the same penalty or penalties, upon the magistrate’s finding of a violation of the order of home incarceration, as the participant could have received at the initial disposition hearing: Provided, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.
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.


1 The period of probation together with any extension thereof shall not exceed seven years. Upon the termination of the probation period, the probation officer shall report to the court the conduct of the probationer during the period of his or her probation, and the court may thereupon discharge the probationer or extend the probation period. Whenever, before the end of the probation period, the probationer has satisfactorily complied with all the conditions of his or her probation and it appears to the court that it is no longer necessary to continue his or her supervision, the court may discharge him or her. All orders extending the probation period and all orders of discharge shall be entered in the records of the court, and a copy of all such orders shall be sent by the clerk of the court to the board within five days after the making of the order.
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.

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

(b) Any inmate of a state correctional institution is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or
(B) He or she has applied for and been accepted by the Commissioner of Corrections into an accelerated parole program. To be eligible to participate in an accelerated parole program, the commissioner must determine that the inmate:

(i) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm or a felony offense where the victim was a minor child;

(ii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm or a felony offense where the victim was a minor child; and

(iii) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment or brandishing of a firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: Provided, That any inmate who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. An inmate
is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found guilty by the court if the matter was tried by the court without a jury.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. The notice shall state with particularity the grounds upon which the finding will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless the grounds upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Does not apply with respect to cases not affected by the amendments and in those cases the prior provisions of this section apply and are construed without reference to the amendments; and
(v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section, “felony crime of violence against the person” means felony offenses set forth in article two, three-e, eight-b or eight-d, chapter sixty-one of this code.

(F) As used in this section, “felony offense where the victim was a minor child” means any felony crime of violence against the person and any felony violation set forth in article eight, eight-a, eight-c or eight-d, chapter sixty-one of this code.

(G) For the purpose of this section, the term “firearm” means any instrument which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive, gunpowder or any other similar means.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment: Provided, That an inmate’s application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the board prior to his or her release on parole. The Commissioner of Corrections or his or her designee shall review and investigate the plan and provide recommendations to the board as to the suitability of the plan: Provided, however, That in cases in which there is a mandatory thirty-day notification period required prior to the release of the inmate, pursuant to section twenty-three of this article, the board may conduct an initial interview and deny parole
without requiring the development of a plan. In the event
the board believes parole should be granted, it may defer a
final decision pending completion of an investigation and
receipt of recommendations. Upon receipt of the plan
together with the investigation and recommendation, the
board, through a panel, shall make a final decision regarding
the granting or denial of parole; and

(4) Has satisfied the board that if released on parole he
or she will not constitute a danger to the community.

c) Except in the case of an inmate serving a life
sentence, a person who has been previously twice convicted
of a felony may not be released on parole until he or she has
served the minimum term provided by law for the crime for
which he or she was convicted. An inmate sentenced for life
may not be paroled until he or she has served ten years, and
an inmate sentenced for life who has been previously twice
convicted of a felony may not be paroled until he or she has
served fifteen years: Provided, That an inmate convicted of
first degree murder for an offense committed on or after
June 10, 1994, is not eligible for parole until he or she has
served fifteen years.

d) In the case of an inmate sentenced to a state
correctional facility regardless of the inmate’s place of
detention or incarceration, the Parole Board, as soon as that
inmate becomes eligible, shall consider the advisability of
his or her release on parole.

e) If, upon consideration, parole is denied, the board
shall promptly notify the inmate of the denial. The board
shall, at the time of denial, notify the inmate of the month
and year he or she may apply for reconsideration and
review. The board shall at least once a year reconsider and
review the case of every inmate who was denied parole and
who is still eligible: Provided, That the board may
reconsider and review parole eligibility any time within
three years following the denial of parole of an inmate
serving a life sentence with the possibility of parole.
(f) Any inmate in the custody of the commissioner for service of a sentence who reaches parole eligibility is entitled to a timely parole hearing without regard to the location in which he or she is housed.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted under this article are intended or may be construed to contravene, limit or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in
subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section and has completed the rehabilitation treatment program required under subdivision (1), subsection (h) of this section, the Parole Board may not require the inmate to participate in an additional program, but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective upon successful completion of the assigned task or tasks, without the need for a further hearing.

(k) (1) The Division of Corrections shall supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the Uniform Act for Out-of-State Parolee Supervision.

(2) The Division of Corrections shall provide supervision, treatment/recovery and support services for all persons released to mandatory supervision under section twenty-seven, article five, chapter twenty-eight of this code.

(l) (1) When considering an inmate of a state correctional facility for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of or report on the inmate’s current criminal record as provided through the West Virginia State Police, the United
States Department of Justice or any other reliable criminal information sources and written reports of the warden or superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate’s conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On the inmate’s industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(C) On any physical, mental, psychological or psychiatric examinations of the inmate.

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: Provided, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eight-b or eight-c of said chapter, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: Provided, however, That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate’s consent, or
admissible in any court of this state, unless the information
disclosed indicates the intention or plans of the parolee to
do harm to any person, animal, institution or to property.
Progress reports of outpatient treatment are to be made at
least every six months to the parole officer supervising the
parolee. In addition, in such cases, the Parole Board shall
inform the prosecuting attorney of the county in which the
person was convicted of the parole hearing and shall request
that the prosecuting attorney inform the Parole Board of the
circumstances surrounding a conviction or plea of guilty,
plea bargaining and other background information that
might be useful in its deliberations.

(m) Before releasing any inmate on parole, the Parole
Board shall arrange for the inmate to appear in person before
a Parole Board panel and the panel may examine and
interrogate him or her on any matters pertaining to his or her
parole, including reports before the Parole Board made
pursuant to the provisions of this section: Provided, That an
inmate may appear by video teleconference if the members
of the Parole Board panel conducting the examination are
able to contemporaneously see the inmate and hear all of his
or her remarks and if the inmate is able to
contemporaneously see each of the members of the panel
conducting the examination and hear all of the members’
remarks: Provided, however, That the requirement that an
inmate personally appear may be waived where a physician
authorized to do so by the Commissioner of Corrections
certifies that the inmate, due to a medical condition or
disease, is too debilitated, either physically or cognitively,
to appear. The panel shall reach its own written conclusions
as to the desirability of releasing the inmate on parole and
the majority of the panel considering the release must
concur in the decision. The warden or superintendent shall
furnish all necessary assistance and cooperate to the fullest
extent with the Parole Board. All information, records and
reports received by the Parole Board shall be kept on
permanent file.
(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional facility or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation on the applications to the Governor.

(p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

§62-12-23. Notification of parole hearing; victim’s right to be heard; notification of release on parole.

(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a parole hearing notification form. This form shall contain the following information:

(1) The name of the county in which the offender was prosecuted and sentenced;

(2) The name of the court in which the offender was prosecuted and sentenced;
(3) The name of the prosecuting attorney or assistant
prosecuting attorney who prosecuted the offender;

(4) The name of the judge who presided over the
criminal case and who sentenced the offender;

(5) The names of the law-enforcement agencies and
officers who were primarily involved with the investigation
of the crime for which the offender was sentenced; and

(6) The names, addresses and telephone numbers of the
victims of the crime for which the offender was sentenced
or the names, addresses and telephone numbers of the
immediate family members of each victim of the crime,
including, but not limited to, each victim’s spouse, father,
mother, brothers, sisters and any adult household member
residing with the victim.

(b) The prosecuting attorney shall retain the original of
the parole hearing notification form and shall provide copies
of it to the circuit court which sentenced the offender, the
Parole Board, the Commissioner of Corrections and to all
persons whose names and addresses are listed on the form.

(c) At least forty-five days prior to the date of a parole
hearing, the Parole Board shall notify all persons who are
listed on the parole hearing notification form, including the
circuit court which sentenced the offender, the prosecuting
attorney’s office that prosecuted the offender and the law-
 enforcement agency and officer primarily involved in the
offense underlying the sentence, of the date, time and place
of the hearing. Such notice shall be sent by regular mail,
properly addressed and postage prepaid, by electronic mail,
or by facsimile. Notice to the victims of the crime for which
the offender was sentenced or the immediate family
members of each victim of the crime shall be sent by
certified mail, return receipt requested. The notice shall
state that the victims of the crime have the right to submit a
written statement to the Parole Board and to attend the
parole hearing to be heard regarding the propriety of
granting parole to the prisoner. The notice shall also state
that only the victims may submit written statements and
speak at the parole hearing unless a victim is deceased, is a minor or is otherwise incapacitated.

(d) The panel considering the parole shall inquire during the parole hearing as to whether the victims of the crime or their representatives, as provided in this section, are present. If so, the panel shall permit those persons to speak at the hearing regarding the propriety of granting parole for the prisoner.

(e) If the panel grants parole, it shall immediately set a date on which the prisoner will be released. Such date shall be no earlier than thirty days after the date on which parole is granted. On the date on which parole is granted, the Parole Board shall notify all persons listed on the parole hearing notification form, including the circuit court which sentenced the offender and office of the prosecuting attorney that prosecuted the offender, that parole has been granted and the date of release. This notice shall be sent by the method prescribed in subsection (c) of this section. A written statement of reasons for releasing the prisoner, prepared pursuant to subsection (b), section thirteen of this article, shall be provided upon request to all persons listed on the parole hearing notification form, including the circuit court which sentenced the offender and office of the 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.


(a) There is created within the State Treasury a special revenue fund designated the Adult Drug Court Participation Fund to be administered by the West Virginia Supreme Court of Appeals.

(b) The fund shall consist of moneys received from individuals participating in an adult drug court program.

(c) All moneys deposited into the State Treasury and credited to the Adult Drug Court Participation Fund shall be used to pay the costs associated with maintaining and administering the court’s adult drug court programs.

(d) All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court’s adult drug court program shall be deposited into the Adult Drug Court Participation Fund. Expenditures from the fund shall be for the purpose set forth in subsection (c) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with article three, chapter twelve of this code and upon fulfillment of the requirements of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.
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.

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client’s or patient’s physical, mental or emotional condition, any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information shall not be disclosed, except:

*NOTE: This section was also amended by S. B. 187 (Chapter 196), which passed prior to this act.
(1) In a proceeding under section four, article five of this chapter to disclose the results of an involuntary examination made pursuant to section two, three or four of said article;

(2) In a proceeding under article six-a of this chapter to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To provide notice to the federal National Instant Criminal Background Check System, established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, in accordance with article seven-a, chapter sixty-one of this code;

(5) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself or another;

(6) For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient;

(7) Without the patient’s consent as provided for under the Privacy Rule of the federal Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from the date of admission to a mental health facility if: (i) The provider makes a good faith effort to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum information necessary is released for a specifically stated purpose; and (iii) prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative; and
(8) In a proceeding held under section seventeen, or as required by section eighteen, of article three of chapter 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.

(a) As used in this section, unless the context otherwise requires, “relative” means a spouse, parent, grandparent, stepparent, child, grandchild, sibling or half sibling. The term includes said relationships that are created as a result of adoption.

(b) A relative may file a petition in circuit court seeking access to and information about a protected person which may include the opportunity to have visitation and contact with the protected person. The petition may be filed in the circuit court of the county in which the protected person resides or if the protected person has been admitted to a health care facility in a county other than that in which he or she resides in the circuit court of the county in which the health care facility is located.

(c) The court shall schedule a hearing on the petition within sixty days of the petition being filed: Provided, That if the petition alleges that the protected person’s health is in recent significant decline or he or she is at imminent risk of death, an emergency hearing shall be scheduled as soon as practicable. The court may continue a hearing for good cause shown.

(d) Service of process upon the guardian shall be by personal service, consistent with the West Virginia Rules of Civil Procedure. Service of the petition shall be effected at least ten days prior to the scheduled hearing date: Provided,
That where an emergency hearing is sought pursuant to subsection (c) of this section, service of process upon the guardian shall be as far in advance of the scheduled hearing date as possible.

(e) Upon notice and hearing the court may:

(1) Deny the petition;

(2) Order the guardian to allow the petitioner access to the protected person upon finding, by a preponderance of the evidence, that the guardian is preventing access by the petitioner to the protected person, and that contact with the petitioner is in the best interests of the protected person.

(f) The court may, in its discretion, order the disclosure to the petitioner of such confidential information, as delineated in section one of article three of chapter twenty-seven of this code, as it may deem appropriate.

(g) The court may, in its discretion, award the prevailing party in an action brought under this section court costs and reasonable attorney’s fees. Court costs and attorney’s fees awarded under this subsection may not be paid from the protected person’s estate, unless the court orders otherwise.

(h) If the court grants the petition it may, in its discretion, retain jurisdiction over the matter and modify its order consistent with the best interests of the protected person.

(i) The provisions of this section apply to all guardianship of protected persons regardless of the date guardianship was established.

§44A-3-18. Guardian’s duty to inform certain relatives about protected person’s health and residence.

(a) The provisions of this section apply to relatives who have been granted access to a protected person under section seventeen of this article.
(b) Except as provided by subsection (d) of this section, the guardian of a protected person shall as soon as practicable inform such relatives if:

(1) The protected person dies;

(2) The protected person is admitted to a medical facility for a period of three days or more;

(3) The protected person’s residence has changed; or

(4) The protected person is staying at a location other than his or her usual place of residence for a period that exceeds two calendar weeks.

(c) In the case of the death of the protected person, the guardian shall inform the relative of any funeral arrangements and the location of the protected person’s final resting place.

(d) A relative entitled to receive information regarding a protected person under this section may waive the notice required thereof by this section by providing a written waiver to the guardian. A guardian shall file any such 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.

(a) The provisions of this section apply where a temporary order has been entered by a family court in an action for divorce, annulment, separate maintenance or custody, notwithstanding the provisions of subsection 27-401(c) of this article.

(b) A person who is a party to an action for divorce, annulment, separate maintenance or custody in which a temporary order has been entered pursuant to section 5-501 of this chapter may petition the magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order pursuant to section 5-501 of this chapter.

(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order:

(1) Directing the respondent to refrain from abusing the petitioner or minor children, or both;

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order; and
(3) Ordering the respondent to refrain from contacting, telephoning, communicating with, harassing or verbally abusing the petitioner.

(d) A temporary emergency protective order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent’s abuse of a child, as abuse is defined in section 27-202 of this article. An order of modification shall clearly state which party has custody and describe why custody or visitation arrangements were modified.

(e) (1) The magistrate shall forthwith transmit a copy of any temporary emergency protective order, together with a copy of the petition, by mail or by facsimile machine to the family court in which the action is pending and to law-enforcement agencies. The family court shall set a hearing on the matter to be held no later than ten days following the entry of the order by magistrate. The family court shall give notice of the hearing date, time and place to the parties and shall advise them of their opportunity to appear and participate in a hearing to determine whether the order entered by the magistrate should be extended by the family court to a date certain or should be vacated. The notice shall also provide that a party’s failure to appear may result in the entry of an order extending the order entered by the magistrate to a date certain or vacating the order of the magistrate. Subsequent to the hearing, the family court shall forthwith enter an order and cause the same to be served on the parties and transmitted by mail or by facsimile machine to the issuing magistrate. The magistrate court clerk shall forward a copy of the family court order to law-enforcement agencies.

(2) If no temporary order has been entered in the pending action for divorce, annulment, separate maintenance or custody, the family court shall forthwith return the order with such explanation to the issuing magistrate. The magistrate who issued the order shall vacate the order, noting thereon the reason for termination. The
59 magistrate court clerk shall transmit a copy of the vacated order to the parties and law-enforcement agencies.

61 (f) Notwithstanding any other provision of this code, if the family court extends the temporary emergency protective order entered by the magistrate or if, pursuant to the provisions of section 5-509, the family court enters a protective order as temporary relief in an action for divorce, the family court order shall be treated and enforced as a protective order issued under the provisions of this article.

CHAPTER 66


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

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-

ARTICLE 31. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.


This article may be cited as the Uniform Deployed Parents Custody and Visitation Act.

§48-31-102. Definitions.

In this article:

(1) “Adult” means an individual who has attained eighteen years of age or an emancipated minor.

(2) “Caretaking authority” means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

(3) “Child” means:

(A) An unemancipated individual who has not attained eighteen years of age; or

(B) An adult son or daughter by birth or adoption, or under law of this state other than this article, who is the subject of a court order concerning custodial responsibility.

(4) “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.
(5) “Court” means a tribunal, authorized under law of this state other than this article to make, enforce, or modify a decision regarding custodial responsibility.

(6) “Custodial responsibility” has the same meaning as in section two hundred nineteen, article one of this chapter.

(7) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(8) “Deploying parent” means a service member, who is deployed or has been notified of impending deployment and is:

   (A) A parent of a child under law of this state other than this article; or

   (B) An individual who has custodial responsibility for a child under law of this state other than this article;

(9) “Deployment” means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:

   (A) Are designated as unaccompanied;

   (B) Do not authorize dependent travel; or

   (C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(10) “Family member” means a sibling, aunt, uncle, cousin, step-parent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this article.
(11) “Limited contact” means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(12) “Nonparent” means an individual other than a deploying parent or other parent.

(13) “Other parent” means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article.

(14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) “Return from deployment” means the conclusion of a service member’s deployment as specified in uniformed service orders.

(16) “Service member” means a member of a uniformed service.

(17) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(18) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(19) “Uniformed service” means:
(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;
(B) The United States Merchant Marine;
(C) The commissioned corps of the United States Public Health Service;
(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or
(E) The National Guard of a state.

§48-31-103. Remedies for noncompliance.

In addition to other remedies under law of this state other than this article, if a court finds that a party to a proceeding under this article has acted in bad faith or intentionally failed to comply with this article or a court order issued under this article, the court may assess reasonable attorney’s fees and costs against the party and order other appropriate relief.

§48-31-104. Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under this article only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to the provisions of this article, the residence of the
deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed because of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

§48-31-105. Notification required of deploying parent.

(a) Except as otherwise provided in subsection (c) or (d) of this section, a deploying parent shall notify in a record the other parent of a pending deployment not later than seven days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (c) or (d) of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent’s share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a) of this section.

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court,
§48-31-106. Duty to notify of change of address.

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to the provisions of this article shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual’s mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

§48-31-107. General consideration in custody proceeding of parent’s military service.

In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent’s past deployment or possible future deployment in itself in determining the best interest of the child but may consider
any significant impact on the best interest of the child of the parent’s past or possible future deployment.

§48-31-201. Form of agreement addressing custodial responsibility during deployment.

(a) The parents of a child may enter into a temporary agreement under this article granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be:

(1) In writing; and

(2) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d) of this section, an agreement under subsection (a), if feasible, shall:

(1) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(2) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(3) Specify any decision-making authority that accompanies a grant of caretaking authority;

(4) Specify any grant of limited contact to a nonparent;

(5) If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) Specify the frequency, duration and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;
(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) Acknowledge that any party’s child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) Provide that the agreement will terminate according to the procedures specified in this article after the deploying parent returns from deployment; and

(10) If the agreement must be filed pursuant to section two hundred five of this article, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) of this section does not invalidate an agreement under this section.


(a) An agreement under this article is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section two hundred three of this article. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decision-making authority or limited contact by an agreement under this article has standing to enforce the agreement until it has been terminated by court order, by modification under section two hundred three of this article, or under other provisions of this article.
§48-31-203. Modification of agreement.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this article.

(b) If an agreement is modified under subsection (a) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

§48-31-204. Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this article, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

§48-31-205. Filing agreement or power of attorney with court.

An agreement or power of attorney under this article shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.
§48-31-301. Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section one hundred four of this article or, if there is no pending proceeding in a court with jurisdiction under section one hundred four of this article, in a new action for granting custodial responsibility during deployment.

§48-31-302. Expedited hearing.

If a motion to grant custodial responsibility is filed under subsection (b) of section three hundred one of this article before a deploying parent deploys, the court shall conduct an expedited hearing.


In a proceeding under this article, a party or witness who is not reasonably available to appear personally may appear, provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

§48-31-304. Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to this article, the following rules apply:
(1) A prior judicial order, designating custodial responsibility if there is deployment, is binding on the court unless the circumstances meet the requirements of law of this state other than this article for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility if there is deployment, including an agreement executed under section two hundred one of this article, unless the court finds that the agreement is contrary to the best interest of the child.

§48-31-305. Grant of caretaking or decision-making authority to nonparent.

(a) On motion of a deploying parent and in accordance with law of this state other than this article, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

(b) Unless a grant of caretaking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or

(2) In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent’s decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult.
family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child’s education, religious training, health care, extracurricular activities and travel.

§48-31-306. Grant of limited contact.

On motion of a deploying parent, and in accordance with law of this state other than this article, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.


(a) A grant of authority under this article is temporary and terminates under the provisions of this article after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decision-making authority or limited contact under this article may enforce the grant until it is terminated by court order or under other provisions of this article.

§48-31-308. Content of temporary custody order.

(a) An order granting custodial responsibility under this article shall:

(1) Designate the order as temporary; and

(2) Identify to the extent feasible the destination, duration and conditions of the deployment.
(b) If applicable, an order for custodial responsibility under this article shall:

(1) Specify the allocation of caretaking authority, decision-making authority or limited contact among the deploying parent, the other parent, and any nonparent;

(2) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;

(5) Provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) Provide that the order will terminate pursuant to the provisions of this article after the deploying parent returns from deployment.

§48-31-309. Order for child support.

If a court has issued an order granting caretaking authority under this article, or an agreement granting caretaking authority has been executed under section two hundred one of this article, the court may enter a temporary order for child support consistent with law of this state other
§48-31-310. Modifying or terminating grant of custodial responsibility to nonparent.

(a) Except for an order under section three hundred four of this article, except as otherwise provided in subsection (b) of this section, and consistent with the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this article and it is in the best interest of the child. A modification is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

§48-31-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under section two hundred one of this article may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under section two hundred one of this article granting custodial responsibility terminates:

(1) If an agreement to terminate under subsection (a) of this section specifies a date for termination, on that date; or
(2) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) of this section to terminate, a temporary agreement granting custodial responsibility terminates under this article sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to section two hundred five of this article, an agreement to terminate the temporary agreement also shall be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support shall be provided to the court with the agreement to terminate.

§48-31-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

§48-31-403. Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under this article is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the
§48-31-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under this article has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this article: Provided, That no agreement of the parties made pursuant to the provisions of this article shall be the basis for a modification of the parents’ permanent parenting plan made pursuant to section four hundred two, article nine of this chapter.


In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.


This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of
the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

§48-31-503. Savings clause.

1 This article does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of 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.


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

(b) Notwithstanding any other provision of this code to the contrary, the Commissioner of the Division of Tourism, with the advice of the tourism commission, and under the supervision of the Secretary of the West Virginia
Department of Commerce, is authorized and directed to coordinate and supervise the activities of the state, to coordinate and cooperate with the political subdivisions and municipalities of the state, to cooperate with the National Railroad Passenger Corporation and with the other states served by the Cardinal Passenger Train to achieve the public policy set forth in subsection (a) of this section. The commissioner is authorized to conduct such studies, and make such investigations, as may be reasonable and appropriate to advance the public policy set forth in subsection (a) of this section.

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

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

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

(a) The state board shall become a Medicaid provider and seek out Medicaid-eligible students for the purpose of providing Medicaid and related services to students eligible under the Medicaid program and to maximize federal reimbursement for all services available under the Omnibus Budget Reconciliation Act of 1989, as it relates to Medicaid expansion and any future expansions in the Medicaid program for Medicaid and related services for which state dollars are or will be expended.

(b) The state board may delegate this provider status and subsequent reimbursement to regional education service agencies, county boards or both: Provided, That a county board is not required to seek 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.

(c) Annually, no later than January 1, the state board shall report on a county by county basis to the Legislature:

(1) The number and age of children eligible for Medicaid;

(2) The number and age of children with Medicaid coverage;

(3) The types of Medicaid-eligible services provided;

(4) The frequency of services provided;

(5) The Medicaid dollars reimbursed; and
(6) The problems encountered in the implementation of this system.

(d) The state board shall appoint and convene a school health services advisory committee to advise the Secretary of Health and Human Resources and the state superintendent on ways to improve the ability of regional education service agencies, local school boards and Department of Health and Human Resources employees to provide Medicaid-eligible children with all the school-based Medicaid services for which they are eligible and to ensure that the school-based Medicaid service providers bill for and receive all the Medicaid reimbursement to which they are entitled.

(e) The committee shall consist of at least the following individuals:

(1) The person within the Department of Education responsible for coordinating the provision of and billing for school-based Medicaid services in schools throughout the state, who shall provide secretarial, administrative and technical support to the advisory committee;

(2) The person within the Department of Health and Human Resources responsible for coordinating the enrollment of Medicaid-eligible school children throughout the state;

(3) Two representatives of regional education service agencies who are experienced with the process of billing Medicaid for school-based health services;

(4) Two Department of Health and Human Resources employees responsible for supervising employees;

(5) Two persons jointly appointed by the Secretary of Health and Human Resources and the state superintendent;
(6) One representative of the Governor’s task force on school health.

(f) The school health services advisory committee shall meet in the first instance at the direction of the state superintendent, select a chairperson from among its members, and meet thereafter at the direction of the chairperson. The committee shall report its findings and recommendations to the state board and Department of Health and Human Resources, which findings shall then be included in the report to the Legislature by the state board and Department of Health and Human Resources provided in subsection (c) of this section.

(g) All actual and necessary travel expenses of the members of the committee shall be reimbursed by the member’s employing agency, for those members not employed by a state agency, the member’s actual and necessary travel expenses shall be paid by the state board. All such expenses shall be reimbursed in the same manner 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.

(a) In order for the schools to become healthy learning environments and to provide a strong defense against drug use and violence, the State Board of Education shall prescribe programs within the existing health and physical education program which teach resistance and life skills to counteract societal and peer pressure to use drugs, alcohol and tobacco, and shall include counselors, teachers and staff in full implementation of the program. The board shall also prescribe programs to coordinate violence reduction efforts in schools and between schools and their communities and to train students, teachers, counselors and staff in conflict resolution skills. The program shall be comprehensive, interdisciplinary and shall begin in elementary school.

(b) No later than the start of the 2018-2019 school year, a county board shall implement comprehensive drug awareness and prevention programs for students in grades K through 12 to receive instruction regarding the dangers of substance abuse. The purpose of the drug awareness and prevention program is to:
(1) Keep students from illegally using alcohol, tobacco or other drugs;

(2) Reduce or eliminate the incidence and prevalence of student’s alcohol, tobacco and other drug abuse;

(3) Reduce the factors that place students at risk of abusing alcohol, tobacco or other drugs through school and a community based planning processes;

(4) Contribute to the development of school environments and alternative activities that are alcohol, tobacco and drug-free;

(5) Increase the knowledge and skills of students, staff and community members for avoiding the harmful effects of alcohol, tobacco and drug use, and of blood borne pathogens;

(6) Actively involve staff, students, parents and community members in the development and implementation of the drug awareness and prevention program plans;

(7) Facilitate an understanding and appreciation of the risks to, duties of, and likely actions by law-enforcement officers when conducting investigations; and

(8) Instruct how to respond to an officer during a vehicular or other stop or police interaction, including problematic or dangerous action and behaviors that could result in a person being detained or arrested.

(c) The county board shall coordinate the delivery of instruction to meet the purposes of subsection (b) of this section with educators, drug rehabilitation specialists and law-enforcement agencies to periodically provide age appropriate student education on their experiences with the impacts of illegal alcohol and drug use.
(d) Beginning with the 2018-2019 school year, instruction required pursuant to section nine of this article in the subject of health education in any of the grades six through twelve as considered appropriate by the county board shall include at least sixty minutes of instruction for each student on the dangers of opioid use, the additive characteristics of opioids, and safer alternatives to treat pain.

CHAPTER 70

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.

(a) In all public, private, parochial and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The state board shall, with the advice of the state superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The state board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through twelve as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity to maintaining healthy weight; and (4) education concerning...
cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.

(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least thirty minutes of instruction for each student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term “psychomotor skills” means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as “psychomotor skills”. The CPR instruction must be based on an instructional program established by the American Heart Association or the American Red Cross or another program which is nationally recognized and uses the most current national evidence-based Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by community
members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses and representatives of the American Heart Association or the American Red Cross. These community members are encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an automated external defibrillator (AED): Provided, That any instruction that results in a certification being earned must be taught by an authorized CPR/AED instructor.

(e) The full week of classes during the week within which September 11 falls shall be recognized as “Celebrate Freedom Week.” The purpose of Celebrate Freedom Week is to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded.

Celebrate Freedom Week must include appropriate instruction in each social studies class which:

(1) Includes an in-depth study of the intent, meaning and importance of the Declaration of Independence and the Constitution of the United States with an emphasis on the Bill of Rights;

(2) Uses the historical, political and social environments surrounding each document at the time of its initial passage or ratification; and

(3) Includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the Constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our Constitutional republic.
The requirements of this subsection are applicable to all public, private, parochial and denominational schools located within this state. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

(f) Beginning the 2018-2019 school year, students in the public schools shall be administered a test the same as or substantially similar to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services between their ninth and twelfth grade years as an indicator of student achievement in the area of civics education. The test results may be reported in the aggregate to the county board for evaluation by the board’s curriculum director and reported to the board members. Nothing in this subsection creates a standard or requirement 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.

(a) No later than August 1, 2017, the West Virginia Secondary Schools Athletics Commission shall promulgate rules to establish guidelines for emergency action plans for athletics designed to respond to athletic injuries that occur on school property during school-sponsored athletic events. The rules shall address, at a minimum:

(1) Protocols for practices and for games;

(2) Directives for personnel or equipment which should be available on sports fields or in school buildings for both girls’ and boys’ teams; and

(3) Training needed for school or volunteer personnel on an as-needed basis.

(b) All member schools shall submit an emergency action plan for athletics to the West Virginia Secondary Schools Athletics Commission and their county boards of education by December 31, 2017: Provided, That the county boards shall keep the emergency plan of each school in the county on file and, unless otherwise provided for, provide a copy of each school’s emergency action plan for athletics to each local emergency response agency that has a role in the plan.

(c) Any person licensed by, or certified or registered in, this state to provide health care or professional health care services who renders services of a medical nature to
students under this section, who has an agreement with a county board of education that defines the scope of his or her duties as such, and for which no remuneration is demanded or received, is not liable for any civil damages as a result of rendering such services, or as a result of any act or failure to act in providing or arranging further medical treatment.

(1) The limitation of liability only applies if the services are provided in accordance with acceptable standards of care and the licensed health care provider is not grossly negligent or does not demonstrate willful misconduct.

(2) Any liability is limited to the applicable limits of the professional liability insurance provided by the State Board of Risk and Insurance Management in effect at the time.

(3) Nothing in this subsection nullifies the immunity from civil liability as granted pursuant to section fifteen, article seven, chapter fifty-five of this code or federal law except to the extent to which the actions are covered within the applicable limits of the professional liability insurance provided by the State Board of Risk and Insurance Management pursuant to this section and in effect at the 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.**


(a) The regional education service agencies previously established by this section and W. Va. 126CSR72, filed October 15, 2015, and effective November 16, 2015, shall remain and may continue to operate in accordance with the provisions of this section prior to its amendment and reenactment at the Regular Session of the Legislature, 2017, and with said rule, unless and until modified by a cooperative agreement entered into by county boards within the agency boundaries or dissolved by said county boards: *Provided,* That on July 1, 2018, the regional education service agencies as provided under prior provisions of this section are dissolved.

(b) On July 1, 2018, all property, equipment and records held by the regional education service agencies necessary to 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;
(2) Shall allow West Virginia educators the opportunity to participate in the development of the academic standards;

(3) Shall provide by rule for a cyclical review, by West Virginia educators, of any academic standards that are proposed by the state board;

(4) Shall review assessment tools, including tests of student performance and measures of school and school system performance, and determine when any improvements or additions are necessary;

(5) Shall consider multiple assessments, including, but not limited to, a state testing program developed in conjunction with the state’s professional educators with assistance from such knowledgeable consultants as may be necessary, which may include criterion referenced tests;

(6) Is prohibited from adopting the Smarter Balanced Assessment system or the PARCC assessment system as the statewide summative assessment;

(7) Shall review all accountability measures, such as the accreditation and personnel evaluation systems and consider any improvements or additions deemed necessary; and

(8) Shall ensure that all statewide assessments of student performance are secure.

(c) The state board shall not adopt any national or regional testing program tied to federal funding, or national or regional academic standards tied to federal funding, without oversight by the legislative oversight commission 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.
(a) Legislative findings, purpose and intent. — The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:

(A) Standards which set forth the knowledge and skills that students should know and be able to perform as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system of accountability for continuous improvement articulated by a rule promulgated by the state board that will build capacity in and ensure the efficiency of schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high-quality education, rather than monitoring for compliance with specific laws and regulations; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress;

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority following constructive engagement of the Legislature as provided in section one, article two-h of this chapter and as delegated by the Legislature by general law to establish the standards and assess the performance and progress of students against the standards, and to exercise its supervisory responsibility to hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary,
seeking additional resources in consultation with the Legislature and the Governor;

(3) As the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use;

(4) In consideration of these findings, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that the high-quality standards are, at a minimum, being met and that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis; and

(5) The intent of the Legislature in enacting this section is to establish a process through which the Legislature, the Governor and the state board will constructively consult on any measures affecting standards, assessments and accountability prior to their adoption, examine the performance and progress of students, schools and school systems and, when necessary, consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

(b) Electronic county and school strategic improvement plans. — The state board shall promulgate a rule consistent with this section and in accordance with article three-b,
chapter twenty-nine-a of this code establishing an electronic county strategic improvement plan for each county board and an electronic school strategic improvement plan for each public school in this state. Each respective plan shall be for a period of no more than five years and shall include the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia Education Information System an electronic school strategic improvement plan boilerplate designed for use by all schools to develop an electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the Every Student Succeeds Act or subsequent federal law.

(c) High-quality education standards and efficiency standards. — In accordance with article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high-quality education standards for student, school and school system performance and processes in the following areas:

(1) Academic standards;

(2) Workplace readiness skills;
(3) Finance;
(4) Transportation;
(5) Special education;
(6) Facilities;
(7) Administrative practices;
(8) Training of county board members and administrators;
(9) Personnel qualifications;
(10) Professional development and evaluation;
(11) Student performance, progress and attendance;
(12) Professional personnel, including principals and central office administrators, and service personnel attendance;
(13) School and school system performance and progress;
(14) A code of conduct for students and employees;
(15) Indicators of efficiency;
(16) Digital literacy skills; and
(17) Any other areas determined by the state board.

(d) Comprehensive statewide student assessment program. — The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The assessment program is subject to the following:

(1) The state board shall promulgate a rule in accordance with article three-b, chapter twenty-nine-a of...
this code establishing the comprehensive statewide student assessment program;

(2) Prior to the testing window of the 2017-2018 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required in grades three through eight and administered once during the grade span of nine through twelve to assess progress toward college and career readiness in English/language arts and math. The assessment in science shall be administered once in grade spans three through five, once in grade spans six through eight, and once in grade spans nine through twelve;

(3) In accordance with articles two and two-e, chapter eighteen of this code, the state board shall review or develop, and adopt a college and career readiness assessment to be administered in grade eleven: Provided, That the adopted college and career readiness assessment administered in grade eleven counts toward the statewide student assessment and must be used by a significant number of regionally accredited higher education institutions for determining college admissions;

(4) The comprehensive statewide student assessment shall be administered to students in accordance with the requirements of the Every Student Succeeds Act or subsequent federal law;

(5) The state board may provide, through the statewide assessment program, other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments. For any online assessment, the state board shall provide online assessment
preparation to ensure that students have the requisite digital literacy skills to be successful on the assessment;

(6) The state board may adopt a career readiness assessment that measures and documents foundational workplace skills and leads to a nationally recognized work readiness certificate for students that meet minimum proficiency requirements; and

(7) The comprehensive statewide student assessment adopted prior to the testing window of the 2017-2018 school year shall continue to be used for at least a total of four consecutive years;

(8) No summative assessment approved by the state board may take more than two percent of a student’s instructional time;

(9) No student may be required to complete a greater number of summative assessments than is required by the Every Student Succeeds Act except as otherwise required by this subsection; and

(10) Collection of personal data as part of the assessment process except for what is necessary for the student’s instruction, academic and college and career search needs is prohibited.

(e) State annual performance measures for school and school system accreditation. —

The state board shall promulgate a rule in accordance with article three-b, chapter twenty-nine-a of this code that establishes a system that is based in multiple measures and meets the requirements of any federal law to assess and weigh annual performance measures to assure that schools and school systems are providing a thorough and efficient education to their students. State accreditation shall be reviewed and approved in a balanced manner that gives fair credit to all measures affecting students and subgroups of students in the schools and school systems. The state board
also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, 2018, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

1. Student proficiency and growth in English and language arts, math, science and other subjects determined by the board;
2. Graduation and attendance rate;
3. Students taking and passing AP tests;
4. Students completing a career and technical education class;
5. Closing achievement gaps within subgroups of a school’s student population; and
6. Students scoring at or above average attainment on SAT or ACT tests.

(f) Indicators of efficiency. — In accordance with article three-b, chapter twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update indicators of efficiency for use by the appropriate divisions within the department to ensure efficient management and use of resources in the public schools in the following areas:

1. Curriculum delivery including, but not limited to, the use of distance learning;
(2) Transportation;

(3) Facilities;

(4) Administrative practices;

(5) Personnel; and

(6) Any other indicators as determined by the state board.

Each county board of education shall use the statewide electronic information system established by the state board for data collection and reporting to the state Department of Education.

(g) Assessment and accountability of school and school system performance and processes. — In accordance with article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance measures to evaluate the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance measures shall provide information to the state board, the Legislature and the Governor, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance measures shall include:

(1) The assessment of student, school and school system performance and progress based on the annual measures established pursuant to subsection (e) of this section;

(2) The evaluation of records, reports and other documents that provide information on the quality of education and compliance with statutes, policies and standards: and

(3) The review of school and school system electronic strategic improvement plans.
(h) **Uses of school and school system assessment information.** — The state board shall use information from the system of education performance measures to assist it in ensuring that a thorough and efficient system of schools is being efficiently provided and to improve student, school and school system performance and progress. Information from the system of education performance measures further shall be used by the state board for these purposes, including, but not limited to, the following:

1. Determining accountability and accreditation for schools and school system approval status as required by state board rule and any federal law or regulations; and
2. Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and
3. Targeting additional resources when necessary to improve performance and progress.

The state board shall make the performance measures information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(i) **Early detection and intervention programs.** — Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, or other resources as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, and providing monetary, staffing and other resources where appropriate.
(j) The state board may employ experienced education professionals, who serve at the will and pleasure of the state board, to coordinate on site and school system improvement efforts with staff at the State Department of Education to support schools and school systems in improving education performance measures.

(k) School accreditation. —

(1) The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation shall be subject to the following:

(A) The levels will be designed to demonstrate school performance on multiple measures as established by the state board by legislative rule in accordance with article three-b, chapter twenty-nine-a of this code and consistent with the applicable state laws, policies and standards, which include standards for performance-based accountability, high-quality education, and continuous improvement; and

(B) Will ensure compliance with federal law and applicable state laws, policies and standards at a minimum.

(2) The state board annually shall review the information from the system of education performance measures submitted for each school and shall accredit each school as designated in the rule, and consistent with the applicable state laws, policies and standards; and

(3) Exercise other powers and actions the state board determines necessary to fulfill its duties of general supervision of the schools and school systems of West Virginia.

(l) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance measures and issue to each county board an approval status in compliance with federal law and established by state board rule.
(m) Nonapproval for extraordinary circumstances.

(1) The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.

(2) When extraordinary circumstances exist, but do not rise to the level of immediate intervention as described in subsection (n) of this section, the state board may declare a state of emergency in the school system and shall direct designees to provide recommendations within sixty days of appointment for correcting the extraordinary circumstances. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the extraordinary circumstances, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following:

(A) Limiting the authority of the county board in areas that compromise the delivery of a thorough and efficient education to its students as designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent who may:

(B) Declare that the office of the county superintendent is vacant;

(C) Declare that the positions of personnel who serve at the will and pleasure of the county superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant, subject to application and reemployment;
(D) Fill the declared vacancies during the period of intervention; and

(E) Take any direct action necessary to correct the extraordinary circumstance.

(n) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (m) of this section, if the state board finds any of the following:

(1) A county board fails to act on a statutory obligation which would interrupt the day-to-day operations of the school system;

(2) That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

(3) That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

(o) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the
deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall take one or more of the following actions:

1. Work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor;

2. Recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

   The state board, or its designee, the West Virginia Department of Education, and county school systems, shall work collaboratively in:

   1. Examining reports and electronic strategic improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

   2. Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system;

   3. Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;
(4) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;

(5) Recommending priority funding from the School Building Authority based on identified needs;

(6) Recommending special staff development programs from county boards based on identified needs;

(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing educational expertise and support services strategically toward alleviating deficiencies;

(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

(p) Building leadership capacity. — To help build the governance and leadership capacity of a county board during an intervention in the operation of its school system, and to help assure sustained success following return of control to the county board, the county board shall establish goals and action plans, subject to approval of the state superintendent, to improve performance sufficiently to end the intervention within a period of not more than five years. The state superintendent shall maintain oversight and provide assistance and feedback to the county board on development and implementation of the goals and action plans. At a minimum, the goals and action plans shall include:
(1) An analysis of the training and development activities needed by the county board and leadership of the school system for effective governance and school improvement;

(2) Support for the training and development activities identified which may include those made available through the state superintendent, West Virginia School Board Association, and other sources identified in the goals and action plans; and

(3) Active involvement by the county board in the improvement process, working in tandem with the county superintendent to gather, analyze and interpret data, write time-specific goals to correct deficiencies, prepare and implement action plans and allocate or request from the Department of Education the resources, including board development training and coaching, necessary to achieve approved goals and action plans and sustain system and school improvement.

At least once each year during the period of intervention, the state board shall appoint a designee to assess the readiness of the county board to accept the return of control of the system or school from the state board and sustain the improvements, and shall make a report and recommendations to the state board supported by documented evidence of the progress made on the goals and action plans. The state board may return any portion of control of the operations of the school system or end the intervention in its entirety by a majority vote. If the state board determines at the fifth annual assessment that the county board is still not ready to accept return of control by the state board and sustain the improvements, the state board shall hold a public hearing in the affected county at which the attendance by all members of the county board is requested so that the reasons for continued intervention and the concerns of the citizens of the county may be heard. The state board may continue the intervention only after it holds the public hearing and may require revision of the goals and
action plans. The state board must thereafter hold a public hearing after each annual assessment beyond the fifth year. If a school system is in intervention status on the effective date of this provision, the total years of intervention shall be calculated from the date of initial intervention.

Following the termination of an intervention in the operation of a school system and return of full control by the state board, the support for governance education and development shall continue as needed for up to three years. If at any time within this three years, the state board determines that intervention in the operation of the school system is again necessary, the state board shall again hold a public hearing in the affected county so that the reasons for the intervention and the concerns of the citizens of the county may be heard prior to intervening.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


Subject to the provisions of this chapter and the rules of the state board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and
(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or
(2) Pursuant to subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month’s salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two-miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to subsection (h) of this section; and

(D) Within available revenues, for students within two-miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;
(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Pursuant to rules established by the state board, the county board may provide for professional employees to be certified to drive county board-owned vehicles that have a seating capacity of fewer than ten passengers. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than one of these vehicles may be used for any school-sponsored activity;

(5) Students may not be transported to a school-sponsored activity in any county-owned or leased vehicle that does not meet school bus or public transit ratings. This section does not prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

   (i) Automobile insurance coverage;

   (ii) Vehicle safety specifications;

   (iii) School bus or public transit ratings; and

   (iv) Driver training, certification and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and
(7) Buses shall be used for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may
charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board’s discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to,
bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee’s duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q) (1) Enter into cooperative agreements with one or more county boards or educational services cooperative to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field.

(2) Enter into cooperative agreements with one or more county boards to facilitate coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems including, but not limited to:
(A) Purchasing;

(B) Operation of specialized programs for exceptional children;

(C) Employment of any school personnel as defined in section one, article one, chapter eighteen-a of this code;

(D) Professional development;

(E) Technology including, but not limited to WVEIS;

(F) Billing for school-based Medicaid services in schools throughout the state.

Each such cooperative agreement shall be in writing and agreed to by each county board participating in the cooperative agreement. Each cooperative agreement that is an employment agreement may be entered into on a case-by-case basis. Notwithstanding the geographic quadrants as provided in section thirteen-b of this article, school systems may enter into cooperative agreements with any school system in the state.

(3) Enter into a cooperative agreement with other county boards to establish educational services cooperatives as provided in section thirteen-c of this article.

(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair
when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in article four, chapter eighteen-a of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically article sixteen, chapter five of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of subdivision (3), section two, article sixteen, chapter five of this code; and
(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

§18-5-13b. County Superintendents’ Advisory Council, purpose, reports.

(a) The County Superintendents’ Advisory Council, (“the Council”) is hereby established. The purpose of the council is to promote collaboration among county districts and to provide input to the State Board of Education and state superintendent on issues facing school systems.

(b) After the effective date of this section, but no later than June 1, 2017, all fifty-five county superintendents shall convene to divide the state into four geographic quadrants for the purpose of carrying out the work of the council as described herein.

(c) County superintendents’ responsibilities –

(1) County superintendents belonging to the same geographic quadrant shall meet to select a county superintendent to represent the geographic quadrant. The method of selection of the representative is at the discretion of each geographic quadrant. The representative of each geographic quadrant will represent the council at the state level.
(2) County superintendents of each geographic quadrant shall meet as necessary to identify coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems. These areas of service include, but are not limited to, the cooperative agreement areas as provided in subsection (q), section thirteen of this article.

(d) The representative from each of the four geographic quadrants of the council shall identify issues facing their geographic quadrants and present them at the state level as follows:

(1) Meet semiannually with the State Superintendent of Schools;
(2) Meet annually with the State Board of Education; and
(3) Provide an annual report to Legislative Oversight Commission on Education Accountability and the Governor on or before June 30 of each year.

(e) At least one meeting in each geographic quadrant annually shall include on the meeting agenda a discussion of any recommendations of the county boards in the quadrant for changes in laws or policies needed to better empower them to meet the state’s education goals. A report of these recommendations, if any, shall be included in the annual report to Legislative Oversight Commission on Education Accountability and the Governor.

§18-5-13c. Educational services cooperatives; purpose; establishment; governance; authorized functions and services.

(a) Pursuant to subsection (q), section thirteen of this article, a county board is authorized to enter into a
cooperative agreement with one or more other county boards to establish educational services cooperatives which shall serve as regional units to provide for high quality, cost effective lifelong education programs and services to students, schools, school systems, and communities in accordance with this section. Each educational services cooperative may serve as a regional public multi-service agency to develop, manage, and provide such services or programs as determined by its governing council and as provided in this section or otherwise provided in this code. All references in this code to regional education service agencies or RESA’s mean an educational services cooperative as authorized under this section.

(b) The regional education service agencies previously established by section twenty-six, article two of this chapter and W. Va. 126CSR72, filed October 15, 2015, and effective November 16, 2015, shall remain and may continue to operate in accordance with said section and rule unless and until modified by a cooperative agreement entered into by county boards within the boundaries of the agency or dissolved by said county boards: Provided, That on July 1, 2018, the regional education service agencies as provided under prior provisions of section twenty-six, article two of this chapter are dissolved. If a regional education service agency is reconfigured pursuant to a cooperative agreement or is dissolved, all property, equipment and records held by the regional education service agency necessary to effectuate the purposes of this section shall be transferred or liquidated and disbursed in accordance with the following priority order: (1) To any successor educational services cooperative substantially covering the same geographical area; (2) to the county boards who were members of the regional education service agency as agreed upon by those counties; or (3) to the state board or to other appropriate entities as provided by law.

(c) An educational services cooperative shall be under the direction and control of a governing council consisting of the following members:
(1) The county superintendent of each county participating in the cooperative agreement;

(2) A member of the board of education from each county participating in the cooperative agreement selected by the county board of education as provided in the bylaws of the governing council of the educational services cooperative; and

(3) The following representatives, if any, to be selected by the educational services cooperative administrator with the consent of the governing council:

(A) Representatives of institutions of higher education and community and technical colleges serving the geographical area covered by the educational services cooperative;

(B) One non-superintendent chief instructional leader employed by a member county;

(C) One school principal employed by a member county;

(D) One teacher employed by a member county; and

(E) Additional members representing business and industry, or other appropriate entities, as the governing council determines fit to meet its responsibilities.

(d) The governing council of an educational services cooperative:

(1) Shall adopt bylaws concerning the appointment and terms of its members, including the authorization of designees by its members, the selection of officers and their terms, the filling of vacancies, the appointment of task forces and study groups, the evaluation of the executive director and staff and any other provisions necessary for the operation of the educational services cooperative. A quorum
for governing council meetings shall be a simple majority of the number of members of each governing council;

(2) Shall appoint an individual to serve as the educational services cooperative administrator who shall serve at the will and pleasure of the governing council and shall implement the policies of the governing council;

(3) May employ regular full-time and part-time staff, as necessary, after a majority of the members of a governing council, by vote, verify that such employment is necessary for effective provision of services and to perform services or other projects that may require staff and support services for effective implementation. Staff who are hired into a position that requires a specified certification must maintain the certification for the duration of employment. The governing council is the sole employer of the educational services cooperative’s personnel it employs and shall be responsible for any benefit and liability programs necessitated by such employment. Employees of the educational services cooperative are considered state employees for the purposes of participation in the state’s public employees’ insurance and retirement programs. A recipient of personnel services from the educational services cooperative is not deemed an employer because of the exercise of supervision or control over any personnel services provided;

(4) May purchase, hold, encumber and dispose of real property, in the name of the educational services cooperative, for use as its office or for any educational service provided by the educational services cooperative if a resolution to do so is adopted by a two-thirds vote of the members of the governing council and then approved by three-fourths of the county boards in the educational services cooperative by majority vote of each county board;

(5) Shall operate as Local Educational Agencies (LEA’s) for financial purposes, including grants and cooperative purchasing, and collectively as essential
agencies responsible for performing service functions to the total community. An educational services cooperative is eligible as an LEA to participate in partnership with or on behalf of any county school system or school in those programs that will accomplish implementation of the strategic plan and/or state education initiative of the system or school, or to further statutory priorities consistent with educational services cooperative operations;

(6) May receive, expend and disburse funds from the state and federal governments, from member counties, or from gifts and grants and may contract with county boards of education, the West Virginia Department of Education, institutions of higher education, persons, companies, or other agencies to implement programs and services at the direction of the council. The state board, department of education, or any member of a county board may request implementation of programs and services by the educational services cooperative. An educational services cooperative may also receive funds from profit-generating enterprises, the funds of which will contribute to the educational services cooperative initiatives. Each educational services cooperative is encouraged to partner with member school systems, particularly those designated as low-performing, and other organizations as appropriate to attract and leverage resources available from federal programs to maximize its capacity for meeting the needs of member schools and school systems. Educational services cooperatives are recognized as eligible LEA’s for the purposes of applying, on behalf of school systems, for grant funds consistent with performing regional services and functions and/or supportive of education initiatives of the educational services cooperative;

(7) Upon the request of one or more county boards of education, or by the state board as permitted or contracted, and if directed by law, an educational services cooperative may assume responsibility for one or more functions
otherwise performed by one or more county boards of education;

(8) May offer technical assistance, including targeted comprehensive staff development services, or other technical assistance to any member school or school system, and give priority to those schools and school systems that are found to be out of compliance with a state law or federal law;

(9) May serve as repositories of research-based teaching and learning practices, and shall use technology, particularly web-based technology, to ensure maximum access to such practices by public schools in the region and state; and

(10) Shall develop and/or implement any other programs or services as directed by law or the governing council, or requested by individual member counties or groups of member counties subject to available funds. The Legislature expects that the assistance and programs developed and/or implemented by the educational services cooperatives may differ among the schools, counties and educational services cooperatives.

(e) The administrator of each educational services cooperative shall submit annually a plan to the governing council that identifies the programs and services which are suggested for implementation by the educational services cooperative during the following year. The plan shall contain components of long-range planning determined by the governing council. These programs and services may include, but are not limited to, the following areas:

(1) Administrative services;

(2) Curriculum development;

(3) Data processing;
(4) Distance learning and other telecommunication services;

(5) Evaluation and research;

(6) Staff development;

(7) Media and technology centers;

(8) Publication and dissemination of materials;

(9) Pupil personnel services;

(10) Planning;

(11) Secondary, postsecondary, community, adult, and adult vocational education;

(12) Teaching and learning services, including services for students with special talents and special needs;

(13) Employee personnel and employment services;

(14) Vocational rehabilitation;

(15) Health, diagnostic, and child development services and centers;

(16) Leadership or direction in early childhood and family education;

(17) Community services;

(18) Fiscal services and risk management programs;

(19) Legal services;

(20) Technology planning, training, and support services;

(21) Health and safety services;

(22) Student academic challenges;
(23) Cooperative purchasing services; and

(24) Other programs and services as may be provided pursuant to other provisions of this code.

(f) The educational services cooperative administrator, with advice and assistance of the governing council, may select as its fiscal agent one of the county boards of education comprising the educational services cooperative. The county board so selected may maintain a separate bank account or accounts for the receipt and disbursement of all educational services cooperative funds and perform the accounting functions specified in the policies adopted by the state board. A county board of education serving as a fiscal agent may not initiate action, direct the programs or substitute its judgment for that of the educational services cooperative administrator as advised by the governing council. The county board of education may reject an action of the educational services cooperative administrator if sufficient funds are not available, or if it perceives a legal conflict. The educational services cooperative administrator shall make arrangements for an annual audit to be conducted in accordance with the requirements of the OMB Uniform Guidance (2 C.F.R. 200) and the cost of the audit shall be incurred by the educational services cooperative. Prior to making those arrangements, the educational services cooperative administrator must coordinate with the respective fiscal agent to ensure the audit addresses all applicable issues.

(g) Notwithstanding any other provision of this code to the contrary, employees of educational services cooperatives shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.

(h) Notwithstanding any other provision of this code to the contrary, county board members serving on governing councils of educational services cooperatives may receive compensation at a rate not to exceed $100 per meeting
attended, not to exceed fifteen meetings per year. County board members serving on governing councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration. A county board member may not be an employee of an educational services cooperative.

§18-5-45. School calendar.

(a) As used in this section:

(1) “Instructional day” means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum number of minutes as follows:

(i) For early childhood programs as provided in subsection (d) section forty-four of this article;

(ii) For schools with grade levels kindergarten through and including grade five, 315 minutes of instructional time per day;

(iii) For schools with grade levels six through and including grade eight, 330 minutes of instructional time per day; and

(iv) For schools with grade levels nine through and including grade twelve, 345 minutes of instructional time per day.

(B) Instructional time is used for instruction and cocurricular activities; and

(C) Other criteria as the state board determines appropriate.

(2) “Cocurricular activities” are activities that are closely related to identifiable academic programs or areas
of study that serve to complement academic curricula as further defined by the state board; and

(3) “Instruction delivered through alternative methods” means a plan developed by a county board and approved by the state board for teachers to assign and grade work to be completed by students on days when schools are closed due to inclement weather or other unforeseen circumstances.

(b) Findings. —

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar shall provide for one hundred eighty separate instructional days or an equivalent amount of instructional time as provided in this section.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term that excludes Saturdays and Sundays and consists of at least two hundred days, which need not be successive. The beginning and closing dates of the employment term may not exceed forty-eight weeks;

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which includes an inclement weather and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days, subject to the following:

(A) A county board may increase the length of the instructional day as defined in this section by at least thirty minutes per day to ensure that it achieves at least an amount
of instructional time equivalent to one hundred and eighty separate instructional days within its school calendar and:

(i) Apply up to five days of this equivalent time to cancel days lost due to necessary school closures;

(ii) Plan within its school calendar and not subject to cancellation and rescheduling as instructional days up to an additional five days or equivalent portions of days, without students present, to be used as determined by the county board exclusively for activities by educators at the school level designed to improve instruction; and

(iii) Apply any additional equivalent time to recover time lost due to late arrivals and early dismissals;

(B) Subject to approval of its plan by the state board, a county board may deliver instruction through alternative methods on up to five days when schools are closed due to inclement weather or other unforeseen circumstances and these days are instructional days notwithstanding the closure of schools; and

(C) The use of equivalent time gained by lengthening the school day to cancel days lost, and the delivery of instruction through alternative methods, both as defined in this section, shall be considered instructional days for the purpose of meeting the 180 separate day requirement and as employment days for the purpose of meeting the 200 day employment term.

(3) Within the employment term, noninstructional days shall total twenty and shall be comprised of the following:

(A) Seven paid holidays;

(B) Election day as specified in section two, article five, chapter eighteen-a of this code;

(C) Six days to be designated by the county board to be used by the employees outside the school environment, with
at least four outside the school environment days scheduled to occur after the one hundred and thirtieth instructional day of the school calendar; (D) One day to be designated by the county board to be used by the employees for preparation for opening school and one day to be designated by the county board to be used by the employees for preparation for closing school: Provided, That the school preparation days may be used for the purposes set forth in paragraph (E) of this subdivision at the teacher’s discretion; and

(E) The remaining days to be designated by the county board for purposes to include, but not be limited to:

(i) Curriculum development;
(ii) Professional development;
(iii) Teacher-pupil-parent conferences;
(iv) Professional meetings;
(v) Making up days when instruction was scheduled but not conducted; and

(vi) At least six two-hour blocks of time for faculty senate meetings with at least one two-hour block of time scheduled in the first month of the employment term, at least one two-hour block of time scheduled in the last month of the employment term and at least one two-hour block of time scheduled in each of the months of October, December, February and April; and

(4) Scheduled out-of-calendar days that are to be used for instructional days in the event school is canceled for any reason.

(d) A county board of education shall develop a policy that requires additional minutes of instruction in the school day or additional days of instruction to recover time lost due to late arrivals and early dismissals.
(e) If it is not possible to complete one hundred eighty separate instructional days with the current school calendar and the additional five days of instructional time gained by increasing the length of the instructional day as provided in subsection (c) of this section are insufficient to offset the loss of separate instructional days, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, or an out-of-calendar day and the day will be used for instruction of students: Provided, That the provisions of this subsection do not apply to:

(1) Holidays;

(2) Election day;

(3) Saturdays and Sundays; and

(4) The five days or equivalent portions of days planned within the school calendar exclusively for activities by educators at the school level to improve instruction that are gained by increasing the length of the instructional day as provided in subsection (c) of this section.

(f) The instructional term shall commence and terminate on a date selected by the county board.

(g) The state board may not schedule the primary statewide assessment program more than thirty days prior to the end of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(h) The following applies to cocurricular activities:

(1) The state board shall determine what activities may be considered cocurricular;

(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and
(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(i) Extracurricular activities may not be used for instructional time.

(j) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

(k) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(l) In formulation of a school’s calendar, a county school board shall hold at least two public meetings that allow parents, teachers, teacher organizations, businesses and other interested parties within the county to discuss the school calendar. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class II legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(m) The county board may contract with all or part of the personnel for a longer term of employment.

(n) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and in any county subject to an emergency or disaster declaration by the Governor when the event causing the declaration is substantially related to the loss of instructional days in the county.

(o) Notwithstanding any provision of this code to the contrary, the state board may grant a waiver to a county board for its noncompliance with provisions of chapter eighteen, eighteen-a, eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one
hundred eighty separate instructional days established in this section.

(p) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. “Professional educators”, as used in this section, means “professional educators” as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full
faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it considers most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From those funds, each classroom teacher and librarian shall be allotted $100 for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: Provided, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be
interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for members to interview or otherwise obtain information regarding applicants for classroom teaching vacancies that will enable the faculty senate to submit recommendations regarding employment to the principal. To facilitate the establishment of a process that is timely, effective, consistent among schools and counties, and designed to avoid litigation or grievance, the state board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this subdivision. The rule may include the following:

(A) A process or alternative processes that a faculty senate may adopt;

(B) If determined necessary, a requirement and procedure for training for principals and faculty senate members or their designees who may participate in interviews and provisions that may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in the training for periods beyond his or her individual contract;

(C) Timelines that will assure the timely completion of the recommendation or the forfeiture of the right to make a recommendation upon the failure to complete a recommendation within a reasonable time;

(D) The authorization of the faculty senate to delegate the process for making a recommendation to a committee of no less than three members of the faculty senate; and

(E) Such other provisions as the state board determines are necessary or beneficial for the process to be established by the faculty senate.
(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, That the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.
(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the State Board of Education: *Provided,* That nothing herein creates any new right of access to or review of any individual’s evaluations.

(12) A local board shall provide to each faculty senate at least six two-hour blocks of time for faculty senate meetings with at least one two-hour block of time scheduled in the first month of the employment term, one two-hour block of time scheduled in the last month of the employment term and at least one two-hour block of time scheduled in each of the months of October, December, February and April. A faculty senate may meet for an unlimited block of time during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be used and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board periodically pursuant to guidelines developed by the State Department of Education. Each faculty senate shall encourage the participation of local school improvement
councils, parents and the community at large in developing
the strategic plan for each school.

Each strategic plan developed by the faculty senate shall
include at least: (A) A mission statement; (B) goals; (C)
needs; (D) objectives and activities to implement plans
relating to each goal; (E) work in progress to implement the
strategic plan; (F) guidelines for placing additional staff into
integrated classrooms to meet the needs of exceptional
needs students without diminishing the services rendered to
the other students in integrated classrooms; (G) guidelines
for implementation of collaborative planning and
instruction; and (H) training for all regular classroom
teachers who serve students with exceptional needs in
integrated classrooms.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-8a. Foundation allowance for regional education
service agencies.

For the fiscal year beginning on July 1, 2006, and for
each fiscal year thereafter, the foundation allowance for
regional education service agencies shall be equal to sixty-
three one-hundredths percent of the allocation for
professional educators as determined in section four of this
article, but not more than $3,690,750. The allowance shall
be distributed to the regional education service agencies in
accordance with rules adopted by the state board. The
allowance for regional education service agencies shall be
excluded from the computation of total basic state aid as
provided in section twelve of this article: Provided, That the
foundation allowance for regional education service
agencies shall be reduced to zero for the fiscal year
beginning on July 1, 2017, and for each fiscal year
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.

(a) Notwithstanding section seven, article two of this chapter, every teacher who is employed for a period of time more than one half the class periods of the regular school day and every service person whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount indicated in the state minimum pay scale as set forth in section eight-a of this article shall be provided a daily lunch recess of not less than thirty consecutive minutes, and the employee shall not be assigned any responsibilities during this recess. The recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of the employee being granted a recess under this section.

(b) Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each school day to be used to complete necessary preparations for the instruction of pupils. No teacher may be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982). Educators shall receive uninterrupted time for planning periods each day. Administrators may not require a teacher to use the planning period time allotted to complete duties beyond instructional planning, including, but not limited to, administrative tasks and meetings.

The duration of the planning period shall be in accordance with the following:

(1) For grades where the majority of the student instruction is delivered by only one teacher, the planning period shall be no less than forty minutes; and
(2) For grades where students take separate courses during at least four separate periods of instruction, most usually delivered by different teachers for each subject, the planning period shall be the length of the usual class period taught by the teacher, but no less than forty minutes. Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection: *Provided,* That any substitute teacher who is employed to teach a minimum of two consecutive days in the same position shall be granted a planning period pursuant to this section.

(c) Nothing in this section prevents any teacher from exchanging his or her lunch recess or a planning period or any service person from exchanging his or her lunch recess for any compensation or benefit mutually agreed upon by the employee and the county superintendent or his or her agent: *Provided,* That a teacher and the superintendent or his or her agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among those teachers within the individual school, and a service person granted rights under this section and the superintendent or his or her agent may not agree to terms which are different from those available to any other service personnel within the same classification category granted rights under this section within the individual school or to terms which in any way discriminate among those service personnel within the same classification category within the individual school.
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.

(a) For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall provide a uniform format for school, school district and statewide school report cards and shall promulgate rules concerning
the collection and reporting of data and the preparation of report cards under this section. The format shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available upon request.

(b) The school report cards shall include information as prescribed in this section to give the parents of students at the school and the general public an indication of the quality of education at the school and other programs supportive of community needs, including, but not limited to, the following:

(1) Indicators of student performance at the school in comparison with the county, state, regional and national student performance, as applicable, including student performance by grade level in the various subjects measured pursuant to a uniform statewide assessment program adopted by the state board; school attendance rates; the percent of students not promoted to next grade; and the graduation rate;

(2) Indicators of school performance in comparison with the aggregate of all other schools in the county and the state, as applicable, including enrollment; average class size; pupil-teacher ratio; pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school;

(3) The names of the members of the local school improvement council, created pursuant to section two, article five-a of this chapter; and

(4) The name or names of the business partner or partners of the school.

(c) The school district report card shall include the data for each school for each separately listed applicable
indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The statewide school report card shall include the data for each county for each separately listed indicator and the aggregate for all counties for each indicator.

(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and also shall include the state norms and the upcoming year’s targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each county board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. The school and school district report cards shall 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 to the parent or parents, guardian or custodian of a child enrolled in that school. In addition, each county board shall submit the completed report cards to the state board which shall make copies available to any person requesting them. The report cards shall be completed and disseminated prior to January 1, 1989, and in each year thereafter, and shall be based upon information for the current school year, or for the most recent school year for which the information is available, in which case the year shall be clearly footnoted.

(e) In addition to the requirements of subsection (c) of this section, the school district report card shall list the following information:
(1) The names of the members of the county board and 
the dates upon which their terms expire; and 

(2) The names of the county school superintendent and 
every assistant and associate superintendent and their area 
of school administration. 

(f) The state board shall develop and implement a 
separate report card for nontraditional public schools 
pursuant to the appropriate provisions of this section to the 
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.

(a) County boards shall provide kindergarten programs for all children who have attained the age of five prior to September 1 of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four of this article, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(b) Beginning in the school year 2019-2020, county boards shall provide kindergarten programs for all children who have attained the age of five prior to July 1 of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four of this article, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(c) Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by rules established by the state board. The state board shall establish the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel may be employed in any kindergarten program unless he or she meets the minimum requirements. Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program and who is employed in the same capacity on and after that date and any new person
employed in that capacity in a kindergarten program on and after that date shall hold the position of aide and either Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant Teacher II or Early Childhood Classroom Assistant Teacher III. Any person employed as an aide in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and shall be granted an Early Childhood Classroom Assistant Teacher permanent authorization by the state superintendent pursuant to section two-a, article three, chapter eighteen-a of this code.

(d) The state board, with the advice of the state superintendent, shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed also are intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of those programs by the state superintendent, provided application for the evaluation and approval is made in writing by proper authorities in control of the programs. The state superintendent, annually, shall publish a list of nonpublic kindergarten programs, including Montessori kindergartens that have been approved in accordance with the provisions of this section. Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method which have teachers who have training or experience, regardless of additional certification, in the use of the Montessori method of instruction for kindergartens shall be considered to be approved.

(e) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement
regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as the county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child’s health, the involvement of parents and other factors as each county board may find pertinent. The determinations by any county board are final and conclusive.

§18-5-44. Early childhood education programs.

(a) For the purposes of this section, an “early childhood education program” means a program created under this section for children who have attained the age of four prior to September 1 of the school year in which the children enter the program.

(b) For the purposes of this section beginning in the school year 2018-2019, an “early childhood education program” means a program created under this section for children who have attained the age of four prior to July 1 of the school year in which the children enter the program.

(c) Findings. –

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;
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;
(8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

d) County boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the children enter the early childhood education program. These early childhood education programs shall provide at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of instruction per week.

e) Beginning in the school year 2018-2019, county boards shall provide early childhood education programs for all children who have attained the age of four prior to July 1 of the school year in which the children enter the early childhood education program.

f) The program shall meet the following criteria:

(1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a, article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this subsection;
(2) It shall be open to all children meeting the age requirement set forth in this section;

(3) It shall provide no less than fifteen hundred minutes of instruction per week, in a full-day program with at least forty-eight thousand minutes of instruction annually; and

(4) It shall permit a parent of an enrolled child to withdraw the child from that program by notifying the district in writing. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(g) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in this section, may be counted toward satisfying the requirement of subsection (c) of this section.

(h) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, et seq.;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, et seq.;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, et seq.;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.
(i) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(j) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs; and

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of this section; or

(3) The secretary finds that, if the county board has not met one or more of the requirements of this subsection, the county board has acted in good faith and the failure to comply was not the primary fault of the county board. Any
denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(k) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(l) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(m) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

(n) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;
(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(o) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(p) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(q) Except as required by federal law or regulation, beginning in the school year 2018-2019, no county board may enroll students who will be less than four years of age prior to July 1 for the year they enter school.

(r) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(s) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human
Resources in the preparation of the rule. The rule shall contain the following:

(1) Standards for curriculum;

(2) Standards for preparing students;

(3) Attendance requirements;

(4) Standards for personnel; and

(5) Any other terms necessary to implement the provisions of this section.

The rule shall include the following elements relating to curriculum standards:

(1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;
(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decisionmaking and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(u) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.

(a) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the
school year in which the sixth birthday is reached prior to
September 1 of such year or upon enrolling in a publicly
supported kindergarten program and, subject to subdivision
(3) of this subsection, continues to the sixteenth birthday or
for as long as the student continues to be enrolled in a school
system after the sixteenth birthday.

(1) A child may be removed from such kindergarten
program when the principal, teacher and parent or guardian
concur that the best interest of the child would not be served
by requiring further attendance: Provided, That the
principal shall make the final determination with regard to
compulsory school attendance in a publicly supported
kindergarten program.

(2) The compulsory school attendance provision of this
article shall be enforced against a person eighteen years of
age or older for as long as the person continues to be
enrolled in a school system and may not be enforced against
the parent, guardian or custodian of the person.

(3) Notwithstanding the provisions of section one of this
article, compulsory school attendance begins with the
school year in which the sixth birthday is reached prior to
September 1 of such year or upon enrolling in a publicly
supported kindergarten program and continues to the
seventeenth birthday or for as long as the student continues
to be enrolled in a school system after the seventeenth
birthday: Provided, That beginning in the school year 2019-
2020, compulsory school attendance begins with the school
year in which the sixth birthday is reached prior to July 1 of
such year or upon enrolling in a publicly supported
kindergarten program.

(b) Attendance at a state-approved or Montessori
kindergarten, as provided in section eighteen, article five of
this chapter, is deemed school attendance for purposes of
this section. Prior to entrance into the first grade in
accordance with section five, article two of this chapter,
each child must have either:
(1) Successfully completed such publicly or privately supported, state-approved kindergarten program or Montessori kindergarten program; or

(2) Successfully completed an entrance test of basic readiness skills approved by the county in which the school is located. The test may be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the county board.

(c) Notwithstanding the provisions of this section, section five, article two of this chapter and section eighteen, article five of this chapter, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement.

(d) This section does not prevent a student from another state from enrolling in the same grade in a public school in West Virginia as the student was enrolled at the school from which the student transferred.

CHAPTER 75


[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.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by medical personnel and authorized nonmedical personnel and not by students.

(b) An allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code or an osteopathic physician licensed to practice pursuant to
the provisions of article fourteen, chapter thirty of this code
may prescribe within the course of his or her professional
practice standing orders and protocols for use when
necessary by a school which wishes to maintain epinephrine
auto-injector pursuant to the provisions of this section.

(c) A school nurse, as set forth in section twenty-two of
this article, may administer an epinephrine auto-injector to
a student or school personnel during regular school hours or
at a school function when the school nurse medically
believes the individual is experiencing an anaphylactic
reaction. A school nurse may use the school supply of
epinephrine auto-injectors for a student or school personnel
authorized to self-administer that meet the requirements of
a prescription on file with the school.

(d) Nonmedical school personnel who have been trained
in the administration of an epinephrine auto-injector and
who have been designated and authorized by the school or
county board to administer the epinephrine auto-injector are
authorized to administer an epinephrine auto-injector to a
student or school personnel during regular school hours or
at a school function when the authorized and designated
nonmedical school personnel reasonably believes, based
upon their training, that the individual is experiencing an
anaphylactic reaction. Nonmedical school personnel may
use the school supply of epinephrine auto-injectors for a
student or school personnel authorized to self-administer
that meet the requirements of a prescription on file with the
school.

(e) School transportation employees, including bus
drivers, who have been trained in the administration of an
epinephrine auto-injector and who have been designated
and authorized by the school or county board to administer
an epinephrine auto-injector may administer an epinephrine
auto-injector to a student or school personnel during
transportation to or from a school function when the school
transportation employee reasonably believes, based upon
his or her training, that the individual is experiencing an
anaphylactic reaction. A school transportation employee may use the individual’s personal supply of epinephrine auto-injectors or the school’s supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school: Provided, That a school transportation employee shall defer to an individual possessing a higher degree of medical training or the parent of the child experiencing an anaphylactic reaction, if either are present at the time of the reaction: Provided, however, That the school transportation employee, trained and authorized to administer epinephrine auto-injectors, is not subject to the terms of section twenty-two of this article.

(f) Prior notice to the parents of a student of the administration of the epinephrine auto-injector is not required. Immediately following the administration of the epinephrine auto-injector, the school shall provide notice to the parent of a student who received an auto-injection.

(g) A school nurse, a trained school transportation employee, or trained and authorized nonmedical school personnel who administer an epinephrine auto-injection to a student or to school personnel as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the epinephrine auto-injection unless the act or omission was the result of the school nurse, school transportation employee, or trained and authorized nonmedical school personnel’s gross negligence or willful misconduct.

(h) For the purposes of this section, all county boards of education may participate in free or discounted drug programs from pharmaceutical manufacturers to provide epinephrine auto-injectors to schools in their counties which choose to stock auto-injectors.

(i) All county boards of education are required to collect and compile aggregate data on incidents of anaphylactic reactions resulting in the administration of school
maintained epinephrine auto-injectors in their county during a school year and forward the data to the state superintendent of schools. The state superintendent of schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

(j) The State Board of Education, as defined in article two of this chapter, shall consult with the state health officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel and school transportation employees who may administer epinephrine auto-injectors following the necessary training;

(2) The training requirements necessary for nonmedical school personnel and school transportation employees to be authorized to administer an epinephrine auto-injection;

(3) Training on anaphylaxis and allergy awareness for food service workers in the school system, if easily available locally;

(4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained epinephrine auto-injection including who administered the injection, the rational for administering the injection, the approximate time of the injection and any other necessary elements to make the student’s parents fully aware of the circumstances surrounding the administration of the injection;
(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all epinephrine auto-injectors;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained epinephrine auto-injectors during a school year; and

(8) Any other requirements necessary to fully 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.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of an opioid antagonist for use in emergency medical care or treatment for an adverse opioid event. Opioid antagonists shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) A school nurse, as set forth in section twenty-two of this article, is authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, or at an event on school property when the school nurse medically believes the individual is experiencing an adverse opioid event.

(c) Nonmedical school personnel who have been trained in the administration of an opioid antagonist and who have been designated and authorized by the school to administer the opioid antagonist are authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, at an event on school property when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an adverse opioid event.

(d) Prior notice to the parents of a student of the administration of the opioid antagonist is not required. Immediately following the administration of the opioid antagonist, the school shall provide notice to the parent of a student who received the opioid antagonist.

(e) A school nurse or trained and authorized nonmedical school personnel who administer an opioid antagonist as provided in this section is immune from liability for any
civil action arising out of an act or omission resulting from
the administration of the opioid antagonist unless the act or
omission was the result of the school nurse or trained and
authorized nonmedical school personnel’s gross negligence
or willful misconduct.

(f) All county boards of education are required to collect
and compile aggregate data on adverse opioid events
resulting in the administration of school maintained opioid
antagonist in their county during a school year and forward
the data to State Superintendent of Schools. The State
Superintendent of Schools shall prepare an annual report to
be presented to the Joint Committee on Government and
Finance as set forth in article three, chapter four of this code,
by December 31 of each year.

(g) Nothing in this section requires a public, private,
parochial or denominational school located within this state
to possess an opioid antagonist. A public, private, parochial
or denominational school located within this state or a
county board of education is immune from liability from
any civil action arising from the public, private, parochial or
denominational school located within this state not
possessing an opioid antagonist in the school.

(h) The State Board of Education, as defined in article
two of this chapter, shall consult with the State Health
Officer, as defined in section four, article three, chapter
thirty of this code, and promulgate rules necessary to
effectuate the provisions of this section in accordance with
the provisions of article three-b, chapter twenty-nine-a of
this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements
of nonmedical school personnel who may administer opioid
antagonist following the necessary training;

(2) The training requirements necessary for nonmedical
school personnel to be authorized to administer an opioid
antagonist;
(3) Training on what constitutes an adverse opioid event;

(4) Storage requirements for maintaining the opioid antagonist within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained opioid antagonist including who administered the antagonist, the rational for administering the antagonist, the approximate time of the administration of the opioid antagonist and any other necessary elements to make the student’s parents fully aware of the circumstances surrounding the administration of the antagonist;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all opioid antagonist;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained opioid antagonist during a school year; and

(8) Any other requirements necessary to fully 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.

This article shall be known and may be cited as the Accessibility and Equity in Public Education Enhancement Act.

§18-5F-2. Legislative findings; purpose.

(a) The Legislature finds and declares that:

(1) County school districts have called for more local control and flexibility to meet the education needs of their communities;

(2) Students, parents and teachers are seeking alternatives to the traditional classroom delivery of education that better meets the educational needs of students;

(3) Public schools should be able to provide a variety of instructional delivery models;

(4) The county school districts can enhance education opportunities for students, using technology;

(5) Using technology to deliver instruction can provide flexibility and increase options for instruction;

(6) Giving county school districts the flexibility to create innovative programs will provide teachers with new instructional opportunities; and

(7) This Act is not intended to save money through the reduction of school personnel positions.

(b) The purpose of this article is to enhance access and equity in public education in West Virginia.
§18-5F-3. Definitions.

For the purposes of this article, unless a different meaning clearly appears from the context:

(a) “Blended program” means a formal education program in which a student learns:

(1) At least in part through online learning, with some element of student control over time, place, path or pace;

(2) At least in part in a supervised setting outside the home; and

(3) In such a way that the modalities of each student’s learning path within a course or subject are connected to provide an integrated learning experience;

(b) “Eligible student” means a student eligible for attendance in public schools in a school district that provides a virtual instruction program, that is a member of a multicounty consortium providing a virtual instruction program or that does not provide a virtual instruction program and is not a member of a multicounty consortium but participates through a collaborative agreement between the school district in which the student is enrolled and a school district or a multicounty consortium providing a virtual instruction program;

(c) “Multicounty consortium” means a written arrangement where two or more county boards act in concert to establish a virtual school that will serve eligible students; and

(d) “Virtual instruction program” means a program implemented by a county board or multicounty consortium that provides a full-time online or blended program of instruction for students enrolled in any composition of grades kindergarten through twelve.
§18-5F-4. County board policy adoption.

(a) A county board or a multicounty consortium may 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 and after adopting the policy may contract with virtual school providers. When there is a multicounty consortium, each county board in the consortium shall adopt a policy creating the virtual instruction program. The virtual instruction program may begin July 1, 2017, or at any point thereafter: Provided, That, notwithstanding any other provision of this article to the contrary, no eligible students in grades kindergarten through five may participate in a virtual instruction program until after the program has been in operation for one full school year.

(b) The policy adopted by the county board pursuant to this section shall govern the virtual instruction program offered by the county board or multicounty consortium.

(c) The policy shall be consistent with this article and may offer eligible students in grades kindergarten through twelve an online pathway for earning a high school diploma and, at a minimum, shall include the following:

   (1) The scope, instructional model and capacity for the virtual education program;

   (2) Assessment protocol and specific requirements for monitoring performance that are consistent with section five, article two-e of this chapter;

   (3) A plan for monitoring students receiving virtual instruction in accordance with pacing and completion of the required virtual coursework: Provided, That, if virtual instruction occurs in a public school classroom then a teacher, professional personnel, professional educator or paraprofessional employed by that county must be present to monitor;
(4) Qualifications of faculty, which at a minimum shall include a teaching certificate issued pursuant to article three, chapter eighteen-a of this code and state board rules; and

(5) A requirement that any virtual school provider contracted with comply with state and federal privacy laws.

§18-5F-5. Compliance with existing state law.

(a) An eligible student enrolled in a virtual instruction program shall:

(1) Be counted in the net enrollment of the school district in which the student resides for the purposes of calculating and receiving state aid;

(2) Be subject to the same state assessment requirements as other students in the school district; and

(3) Receive a diploma from the school district, upon completing the same coursework required of regular public school students in the district.

(b) An eligible student participating in a virtual instruction program, to the extent the program as delineated in the county board policy allows or requires instruction to occur outside of a school building, is not required to comply with compulsory school attendance requirements set forth in article eight of this code or any other provision of law or state board rule relating to attendance.

(c) Neither the school district, the eligible student nor the parents of the student participating in a virtual instruction program, to the extent the program as delineated in the county board policy allows or requires instruction to occur outside of a school building, may incur any penalty or be held accountable for the absence of the student from the school building.

(d) For an eligible student participating in a virtual instruction program, neither the school district nor the
student, to the extent the program as delineated in the county board policy is a learn at your own pace program, is required to comply with the instructional term requirement set forth in section forty-five, article five of this chapter or any other law or state board rule requiring a student to be receiving instruction for any set time.

(e) An eligible student participating in a virtual instruction program shall be considered to be attending the school in the attendance district created by the county board pursuant to section sixteen, article five of this chapter that the eligible student resides in unless otherwise transferred to another school pursuant to that section or any other provision of this code. The eligible student may participate in any cocurricular and extracurricular activities of that school, but is subject to the same participation requirements imposed on a traditional student attending the school.

(f) A county board is exempt from any provision of law or state board rule that applies to the traditional delivery of instruction such as requirements relating to the physical presence of a student, student monitoring and security, the maximum teacher-pupil ratio set forth in section eighteen-a, article five of this chapter, instructional time requirements and physical education requirements to the extent any of the foregoing conflict with the delivery of the virtual instruction program.

(g) The virtual instruction program is not subject to online course restrictions imposed by the state board, state superintendent or the West Virginia Department of Education.

(h) Coursework offered through a virtual instruction program shall be aligned to the appropriate academic standards as required by state law and state board rule.

(i) The assessment results of a student shall be included in the assessment results of the school and the school district
§18-5F-6. Report to Legislative Oversight Commission on Education Accountability.

At the end of the first year any virtual instruction program is implemented pursuant to this article, the West Virginia Department of Education, after consulting with the county board or boards implementing the program, shall report to the Legislative Oversight Commission on Education Accountability on all aspects of the program. The report, at least, shall include the grade levels of the students the program was offered to; the number of students who enrolled in the program; the number of students who were enrolled in the program full-time and number who participated in a blended program; the number of students who were homeschooled, enrolled in a private school and enrolled in a public school immediately preceding enrollment in the virtual instruction program; and how the students performed academically as compared with students 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.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so;

(3) For the purposes of this article, the following definitions apply:

(A) “Excused absence” includes:

(i) Personal illness or injury of the student;
(ii) Personal illness or injury of the student’s parent, guardian, custodian, or family member: Provided, That the excuse must provide a reasonable explanation for why the student’s absence was necessary and caused by the illness or injury in the family;

(iii) Medical or dental appointment with written excuse from physician or dentist;

(iv) Chronic medical condition or disability that impacts attendance;

(v) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(vi) Calamity, such as a fire or flood;

(vii) Death in the family;

(viii) School-approved or county-approved curricular or extra-curricular activities;

(ix) Judicial obligation or court appearance involving the student;

(x) Military requirement for students enlisted or enlisting in the military;

(xi) Personal or academic circumstances approved by the principal; and

(xii) Such other situations as may be further determined by the county board: Provided, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith; and

(B) “Unexcused absence” means any absence not specifically included in the definition of “excused absence”; and
(4) All documentation relating to absences shall be provided to the school no later than three instructional days after the first day the student returns to school.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director or assistant may serve notice by written or other means to the parent, guardian, or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal, administrative head or other chief administrator will be required.

(c) In the case of five total unexcused absences, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that within five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal, administrative head or other chief administrator of the school in order to discuss and correct the circumstances causing the unexcused absences of the student, including the adjustment of unexcused absences based on the meeting.

(d) In the case of ten total unexcused absences of a student during a school year, the attendance director or assistant may make a complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is
executed or until the end of the school term during which the complaint is made, whichever is later.

(e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days’ advance notice of the date, time and place of the hearing.

(f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(g) The county attendance director and assistants shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(h) In addition to those duties directly relating to the administration of attendance, the county attendance director
and assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible non enrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that set forth student absences that are excluded for accountability purposes. The absences that are excluded by rule shall include, but are not limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers’ conferences with parents and students;
(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided in subsection (a) of this section, or if requested by the chief administrator, principal or assistant principal; and

(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.

(a) The basic foundation allowance to the county for professional educators is the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of this code, subject to the following:

(1) In making this computation a county shall receive an allowance for state aid eligible professional educator positions to each one thousand students in net enrollment as follows:

(A) For each high-density county, seventy-two and three tenths professional educators per each one thousand students in net enrollment;
(B) For each medium-density county, seventy-two and forty-five one hundredths professional educators per each one thousand students in net enrollment;

(C) For each low-density county, seventy-two and six tenths professional educators per each one thousand students in net enrollment;

(D) For each sparse-density county, seventy-two and seventy-five one hundredths professional educators per each one thousand students in net enrollment; and

(E) For any professional educator positions, or fraction thereof, determined for a county pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed, the county’s allowance for these positions shall be determined using the average state funded salary of professional educators for the county;

(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one’s enrollment therein and the personnel shall be considered within the above-stated limit.

(b) Each county board shall establish and maintain a minimum ratio of professional instructional personnel per state aid funded professional educators as follows:

(1) For each high-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-nine one hundredths percent;
(2) For each medium-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-four one hundredths percent;

(3) For each low-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and eighteen one hundredths percent;

(4) For each sparse-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and seven one hundredths percent; and

(5) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional instructional personnel for the school or program may be prorated among the participating counties on the basis of each one’s enrollment therein and the personnel shall be considered within the above-stated limit.

(c) Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: Provided, That a county may not be penalized if it has increases in enrollment during that school year: Provided, however, That for the school year 2017-2018, only, a county may not be penalized for not meeting the applicable minimum ratio required in subsection (b) of this section.

(d) A county may not increase the number of administrative personnel employed as either professional educators or pay grade (H) service personnel above the number which were employed, or for which positions were posted, on June 30, 1990, and, therefore, county boards shall
whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.

§18-9A-5. Foundation allowance for service personnel.

(a) The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of this code, to such service personnel employed, subject to the following:

(1) A county shall receive an allowance for state aid eligible service personnel positions per one thousand students in net enrollment, as follows:

(A) For each high-density county, forty-three and ninety-seven one hundredths service personnel per one thousand students in net enrollment;

(B) For each medium-density county, forty-four and fifty-three one hundredths service personnel per one thousand students in net enrollment;

(C) For each low-density county, forty-five and one tenth service personnel per one thousand students in net enrollment;

(D) For each sparse-density county, forty-five and sixty-eight one hundredths service personnel per one thousand students in net enrollment; and

(E) For any service personnel positions, or fraction thereof, determined for a county pursuant to subdivision (1) of this subsection that exceed the number employed, the county’s allowance for these positions shall be determined using the average state funded minimum salary of service personnel for the county;
(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties on the basis of each one’s enrollment therein and that the personnel shall be considered within the above-stated limit.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

(a) The total teachers retirement fund allowance is the sum of the basic foundation allowance for professional educators, the basic foundation allowance for professional student support personnel and the basic foundation allowance for service personnel, as provided in sections four, five and eight of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by the average retirement contribution rate for each county board. The average contribution rate for each county board is based on the required employer contributions for state aide eligible employees participating in the retirement plans pursuant to articles seven-a and seven-b of this chapter.

(b) The teachers retirement fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the employers accumulation fund of the State Teachers Retirement System pursuant to section eighteen, article seven-a of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section as to all personnel included in the allowance for state aid in accordance with sections four, five and eight of this article.
(c) In addition to the teachers retirement fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the teachers retirement fund in accordance with the following provisions of this subsection. On or before December 31, of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten-d, chapter five of this code shall submit a report to the President of the Senate and the Speaker of the House of Delegates which sets forth an actuarial valuation of the teachers retirement fund as of the preceding thirtieth day of June. Each annual report shall recommend the actuary's best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a forty-year period beginning on July 1, 1994, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source: Provided, That the appropriation and allocation to the teachers' retirement fund made pursuant to the provisions of section six-b of this article shall be included in the determination of the requisite funding amount. In any year in which the actuary determines that the teachers retirement fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary's best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.


(a) The allowance in the foundation school program for each county for transportation is the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for
contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent: Provided, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: Provided, however, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;
(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the replacement of buses except as provided in subdivision (4) of this subsection. Buses purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of year model, are subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district’s net enrollment history and transportation needs: Provided, That the superintendent may not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Notwithstanding the restriction on the use of funds for the replacement of buses pursuant to subdivision (3) of this subsection, up to $200,000 of these funds in any school year may be used by a county for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if a request by the county superintendent listing the amount, the intended use of the funds and the serviceability of the bus fleet is approved by the state superintendent. Before approving the request, the state superintendent shall verify the serviceability of the county’s bus fleet based upon the state school bus inspection defect rate of the county over the two prior years; and
(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose is the sum of the county shares: Provided, That a county may not receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county is for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

§18-9A-9. Foundation allowance for other current expense and substitute employees and faculty senates.

The total allowance for other current expense and substitute employees is the sum of the following:

(1) For current expense:

(A) The non-salary related expenditures for operations and maintenance, exclusive of expenditures reported in special revenue funds, for the latest available school year, in each county, divided by the total square footage of school buildings in each county is used to calculate a state average expenditure per square foot for operations and maintenance;
(B) The total square footage of school buildings in each county divided by each county’s net enrollment for school aid purposes is used to calculate a state average square footage per student;

(C) Each county’s net enrollment for school aid purposes multiplied by the state average expenditure per square foot for operations and maintenance as calculated in paragraph (A) of this subdivision and multiplied by the state average square footage per student as calculated in paragraph (B) of this subdivision is that county’s state average costs per square footage per student for operations and maintenance;

(D) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the allowance for current expense may be prorated among the participating counties by adjusting the net enrollment for school aid purposes utilized in the calculation by the number of students enrolled therein for each county; and

(E) Each county’s allowance for current expense is 70.25% of the county’s state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (C) of this subdivision; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and professional student support personnel as determined in sections four and eight of this article. Distribution to the counties is made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties is made proportional to
the number of service personnel authorized for the county
in compliance with section five of this article; plus

(4) For academic materials, supplies and equipment for
use in instructional programs, $200 multiplied by the
number of professional instructional personnel and
professional student support personnel employed in the
schools of the county. Distribution is made to each county
for allocation to the faculty senate of each school in the
county on the basis of $200 per professional instructional
personnel employed at the school. “Faculty Senate” means
a faculty senate created pursuant to section five, article five-
a of this chapter. Decisions for the expenditure of such funds
are made at the school level by the faculty senate in
accordance with the provisions of said section five, article
five-a and may not be used to supplant the current expense
expenditures of the county. Beginning on September 1,
1994, and every September thereafter, county boards shall
forward to each school for the use by faculty senates the
appropriation specified in this section. Each school shall be
responsible for keeping accurate records of expenditures.

§18-9A-10. Foundation allowance to improve instructional
programs and instructional technology.

(a) The total allowance to improve instructional
programs and instructional technology is the sum of the
following:

(1) For instructional improvement, in accordance with
county and school electronic strategic improvement plans
required by section five, article two-e of this chapter, an
amount equal to ten percent of the increase in the local share
amount for the next school year above any required
allocation pursuant to section six-b of this article shall be
added to the amount of the appropriation for this purpose
for the immediately preceding school year. The sum of these
amounts shall be allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be
allocated to each county; and
(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county’s average daily attendance for the preceding year and the county’s second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by section five, article two-e of this chapter and approved by the state board.

Up to fifty percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the county. Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan.

County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county’s inability to meet the requirements of state law or state board policy.

The funds available for personnel under this subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.

The plan shall be made available for distribution to the public at the office of each affected county board; plus
(2) For the purposes of improving instructional technology, an amount equal to twenty percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county’s average daily attendance for the preceding year and the county’s second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional technology programs according to the county board’s strategic technology learning plan.

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board’s strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue
bonds issued prior to January 1, 1994, shall be paid by the Department of Education in accordance with the expenditure schedule approved by the state budget office into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to twenty-five percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to fifty percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board’s strategic technology learning plan or amendments thereto.

(c) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to $24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.
(d) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the 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.

From the funds available to it the School Building Authority shall 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 in making repairs or performing urgent maintenance to facilities or facility related equipment or facility related equipment replacement necessary to maintain the serviceability or structural integrity of school facilities currently in use or necessary for educating the students of the county. The grants shall be made in accordance with guideline established by the school building authority. For the purposes of this section, “financially distressed county” means a county either in deficit or on the most recently established watch list established by the Department of 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 the authority, by purchase, lease-purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

5  (4) To acquire, hold and dispose of real and personal property for its corporate purposes;

6  (5) To make bylaws for the management and rule of its affairs;

7  (6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation: Provided, That contracts entered into by the School Building Authority in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee,
bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of article three, chapter five-a of this code: *Provided, however, That notwithstanding any other provisions of this code, any authority of the Attorney General of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: *Provided further, That the Attorney General of this state shall complete all reviews of contracts and documents relating to the issuance of bonds under this article within ten calendar days of receipt of the contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the authority that its interests will be best served;

(9) To acquire by purchase, eminent domain or otherwise all real property or interests in the property necessary or convenient to accomplish the purposes of this article;

(10) To require proper maintenance and insurance of any project authorized under this section, including flood insurance for any facility within the one hundred year flood plain at which authority funds are expended;

(11) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the revenues of the authority;

(12) To assist any county board of education that chooses to acquire land, buildings and capital improvements to existing school buildings and property for use as public school facilities, by lease from a private or public lessor for
a term not to exceed twenty-five years with an option to purchase pursuant to an investment contract with the lessor on such terms and conditions as may be determined to be in the best interests of the authority, the state Board of Education and the county board of education, consistent with the purposes of this article, by transferring funds to the state Board of Education as provided in subsection (d), section fifteen of this article for the use of the county board of education;

(13) To accept and expend any gift, grant, contribution, bequest or endowment of money and equipment to, or for the benefit of, the authority or any project under this article, from the State of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with the gift, grant, contribution, bequest or endowment;

(14) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(15) To contract for architectural, engineering or other professional services considered necessary or economical by the authority to provide consultative or other services to the authority or to any regional educational service agency or county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed in the plan, to inspect existing facilities or any project that has received or may receive funding from the authority or to perform any other service considered by the authority to be necessary or economical. Assistance to the region or district may include the development of preapproved systems, plans, designs, models or documents; advice or oversight on any plan or project; or any other service that may be efficiently provided to Regional Educational Service Agencies or county boards by the authority;

(16) To provide funds on an emergency basis to repair or replace property damaged by fire, flood, wind, storm,
earthquake or other natural occurrence, the funds to be made
available in accordance with guidelines of the School
Building Authority;

(17) To transfer moneys to custodial accounts
maintained by the School Building Authority with a state
financial institution from the school construction fund and
the school improvement fund created in the State Treasury
pursuant to the provisions of section six of this article, as
necessary to the performance of any contracts executed by
the School Building Authority in accordance with the
provisions of this article;

(18) To enter into agreements with county boards and
persons, firms or corporations to facilitate the development
of county board projects and county board facilities plans.
The county board participating in an agreement shall pay at
least twenty-five percent of the cost of the agreement.
Nothing in this section shall be construed to supersede, limit
or impair the authority of county boards to develop and
prepare their projects or plans;

(19) To encourage any project or part thereof to provide
opportunities for students to participate in supervised,
unpaid work-based learning experiences related to the
student’s program of study approved by the county board.
The work-based learning experience must be conducted in
accordance with a formal training plan approved by the
instructor, the employer and the student and which sets forth
at a minimum the specific skills to be learned, the required
documentation of work-based learning experiences, the
conditions of the placement, including duration and safety
provisions, and provisions for supervision and liability
insurance coverage as applicable. Projects involving the
new construction and renovation of vocational-technical
and adult education facilities should provide opportunities
for students to participate in supervised work-based learning
experiences, to the extent practical, which meet the
requirements of this subdivision. Nothing in this
subdivision may be construed to affect registered youth
apprenticeship programs or the provisions governing those programs; and

(20) To do all things necessary or convenient to carry out the powers given in this article.

(b) The special revenue account in the State Treasury known as the “School Building Authority Fund” is hereby continued. The fund is to be administered by the School Building Authority. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate amount of bonds outstanding at any time, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is $500 million; however, any amount of bonds for which moneys have been deposited in a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds shall be excluded from the calculation of the maximum aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority, copies of which shall be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates within five days of their approval, which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts
of any other funds available for the costs or from any appropriation, grant or gift for the costs: Provided, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the School Building Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount of the bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds: Provided, however, That revenue bonds issued on or after January 1, 1994, and prior to January 1, 2008, which are secured by lottery proceeds from section eighteen, article twenty-two, chapter twenty-nine of this code shall mature at such time or times not exceeding ten years from their respective dates: Provided further, That revenue bonds issued on or after January 1, 2008, which are secured by lottery proceeds from section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code, shall mature at such time or times not exceeding twenty years from their respective dates.

(b) The bonds shall be signed by the Governor, his or her designee or the vice chair of the authority, under the great seal of the state, attested by the Secretary of State, and the coupons attached to the bonds shall bear the facsimile signature of the Governor, his or her designee or the vice
chair of the authority. In case any of the officers whose
signatures appear on the bonds or coupons cease to be
officers before the delivery of the bonds, the signatures shall
nevertheless be valid and sufficient for all purposes the
same as if the officers had remained in office until the
delivery. The revenue bonds shall be sold in the manner
determined by the authority to be for the best interests of the
state.

(c) Any pledge of revenues made by the School
Building Authority for revenue bonds issued prior to July
20, 1993, pursuant to this article is valid and binding
between the parties from the time the pledge is made; and
the revenues pledged shall immediately be subject to the
lien of the pledge without any further physical delivery of
the revenues pledged or further act. The lien of the pledge
is valid and binding against all parties having claims of any
kind in tort, contract or otherwise, irrespective of whether
the parties have notice of the lien of the pledge and the
pledge shall be a prior and superior charge over any other
use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for
the purpose or purposes as may be generally or specifically
set forth in the resolution authorizing those bonds and shall
be disbursed in the manner and with the restrictions, if any,
that the authority provides in the resolution authorizing the
issuance of the bonds or in the trust agreement referred to in
this section securing the bonds. If the proceeds of the bonds,
by error in calculations or otherwise, are less than the cost
of any projects specifically set forth in the resolution,
additional bonds may in like manner be issued to provide
the amount of the deficiency; and unless otherwise provided
for in the resolution or trust agreement hereinafter
mentioned, the additional bonds shall be considered to be of
the same issue and are entitled to payment from the same
fund, without preference or priority, as the bonds before
issued for the projects. If the proceeds of bonds issued for
the projects specifically set forth in the resolution
authorizing the bonds issued by the authority exceed the
cost of the bonds, the surplus may be used for any other
projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.

(e) After the issuance of any revenue bonds, the revenues pledged for the revenue bonds shall not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions that are contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued.

(f) The revenue bonds and the revenue refunding bonds and bonds issued for combined purposes, together with the interest on the bonds, are exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof.

(g) Any school construction bonds issued under this section shall be issued on parity with any existing School 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.

Effective July 1, 2012, if funds are available, the Secretary of the West Virginia Department of Health and Human Resources shall select a community-based organization to establish a special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth in a specified community for a duration of seven years. The project will identify, implement and document best practices that can be replicated in other communities. The designated community-based organization shall operate the special pilot project under the direction of the Secretary of the Department of Health and Human Resources and shall work in collaboration with the State School Superintendent, local county school superintendent, Chancellor for Community and Technical College Education, the closest community and technical college and four-year college or university, State Workforce Investment Division, Executive Director of the West Virginia Vocational Rehabilitation Services, the local juvenile court system, the local workforce investment board, the Chancellor for Higher Education, the Director of West Virginia Division of Juvenile Services, the local mental or behavioral health organizations and other governmental and community-based organizations.
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 permitees 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.

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon
assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that subsections (b), (g) and (h) of this section and paragraph (I), subdivision (2), subsection (b) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section twenty-two, article three of the Constitution of the State of West Virginia.

(b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school bus as defined in section one, article one, chapter seventeen-a of this code or in or on a public primary or secondary education building, structure, facility or grounds including a vocational education building, structure, facility or grounds where secondary vocational education programs are conducted or at a school-sponsored function, or in or on a private primary or secondary education building, structure or facility: Provided, That it shall not be unlawful to possess a firearm or other deadly weapon on or in a private primary or secondary education building, structure or facility: Provided, That it shall not be unlawful to possess a firearm or other deadly weapon on or in a private primary or secondary education building, structure or facility when such institution has adopted written policies allowing for possession of firearms on or in the institution’s buildings, structures or facilities.

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county or municipal law-enforcement agency;

(B) Any probation officer appointed pursuant to section five, article twelve, chapter sixty-two or chapter forty-nine of this code in the performance of his or her duties;

(C) A retired law-enforcement officer who:

(i) Is employed by a state, county or municipal law-enforcement agency;
(ii) Is covered for liability purposes by his or her employer;

(iii) Is authorized by a county board of education and the school principal to serve as security for a school;

(iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U. S. C. §926C(c); and

(v) Meets all of the requirements for handling and using a firearm established by his or her employer and has qualified with his or her firearm to those requirements;

(D) A person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

(E) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

(F) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

(G) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity;

(H) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity; or

(I) Any person, twenty-one years old or older, who has a valid concealed handgun permit may possess a concealed handgun while in a motor vehicle in a parking lot, traffic
circle or other areas of vehicular ingress or egress to a public
school: Provided, That:

(i) When he or she is occupying the vehicle the person
stores the handgun out of view from persons outside the
vehicle; or

(ii) When he or she is not occupying the vehicle the
person stores the handgun out of view from persons outside
the vehicle, the vehicle is locked, and the handgun is in a
locked trunk, glove box or other interior compartment, or in
a locked container securely fixed to the vehicle.

(3) A person violating this subsection is guilty of a
felony and, upon conviction thereof, shall be imprisoned in
a state correctional facility for a definite term of years of not
less than two years nor more than ten years, or fined not
more than $5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the
State Board of Education who discovers a violation of
subsection (b) of this section shall report the violation as
soon as possible to:

(1) The State Superintendent of Schools. The State
Board of Education shall keep and maintain these reports
and may prescribe rules establishing policy and procedures
for making and delivering the reports as required by this
subsection; and

(2) The appropriate local office of the State Police,
county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided
by article five, chapter forty-nine of this code, a court which
adjudicates a person who is fourteen years of age or older as
delinquent for a violation of subsection (b) of this section
may order the Division of Motor Vehicles to suspend a
driver’s license or instruction permit issued to the person for
a period of time as the court considers appropriate, not to
extend beyond the person’s nineteenth birthday. If the
person has not been issued a driver’s license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person’s application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person’s nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver’s license or instruction permit pursuant to this subsection, the court shall confiscate any driver’s license or instruction permit in the adjudicated person’s possession and forward to the Division of Motor Vehicles.

(e)(1) If a person eighteen years of age or older is convicted of violating subsection (b) of this section and if the person does not act to appeal the conviction within the time periods described in subdivision (2) of this subsection, the person’s license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking the person’s license or privilege to operate a motor vehicle in this state for a period of one year or, in the
event the person is a student enrolled in a secondary school, for a period of one year or until the person’s twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court’s transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of section two, article five-a, chapter seventeen-c of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within ten days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner’s order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f)(1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years of age who knows that the person is in violation of subsection (b) of this section or has reasonable cause to believe that the person’s violation of subsection (b) is imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or shall be confined in jail not more than one year, or both fined and confined.
(g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than ten years, or fined not more than $5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care, custody and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: Provided, That for purposes of this section “person” means an individual or any entity which may acquire title to real property.
Any person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than six months, or both: Provided, That the provisions of this section do not apply to a person as set forth in subdivisions (3) through (7), inclusive, subsection (a), section six of this article while the person is acting in an official capacity; and to a person as set forth in subdivisions (1) through (8), inclusive, subsection (b) of said section, while the person is acting in his or her official capacity: Provided, however, That under no circumstances, except as provided for by the provisions of paragraph (I), subdivision (2), subsection (b), section eleven-a of this article, may any person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the person is a law-enforcement officer or he or she has the express written 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.

(a) Except as otherwise provided in this section, no person, other than the election officers and voters going to the election room to vote and returning therefrom, may be or remain within one hundred feet of the outside entrance to the building housing the polling place while the polls are open. This subsection does not apply to persons who reside or conduct business within such distance of the entrance to the building housing the polling place, while in the discharge of their legitimate business, or to persons whose
(b) A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within one hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within one hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: Provided, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within one hundred feet of the entrance until such time as the voter is to be transported from the polling place.

(c) The election commissions shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his or her ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

(d) Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his or her ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his or her ballot. No voter, or person offering to vote, may hold any conversation or
communication with any person other than the poll clerks or commissioners of election, while in the election room.

(e) The provisions of this section do not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article or to any child fourteen years of age or younger who accompanies a parent, grandparent or legal guardian who is voting. Any dispute concerning the age of a child accompanying a parent, grandparent or legal guardian who is voting shall be determined by the election commissioners.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-9. Electioneering defined; unlawful acts at polling places; exceptions; penalties.

(a) As used in this section, “electioneering” means the displaying of signs or other campaign paraphernalia, the distribution of campaign literature, cards, or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question. “Electioneering” does not include exit polling, so long as persons conducting exit polling are not otherwise engaging in electioneering activities described above, or bumper stickers or signs affixed to a person’s vehicle which is parked within or passing through a distance of one hundred feet of the entrance to a polling place while such person is voting or transporting any voter to the polls.

(b) No officer of election may disclose to any person the name of any candidate for whom a voter has voted. No officer of election may do any electioneering on election day.

(c) No person may do any electioneering on election day within any polling place, or within one hundred feet of the
outside entrance to the building housing the polling place. No person may do any electioneering in the polling place or within one hundred feet of the outside entrance of any polling place where early voting is conducted during the period in which early voting is offered during the hours while such early voting is actually taking place. Nothing in this subsection shall prohibit a citizen from doing any electioneering upon his or her own private property, regardless of distance from the polling place, so long as that electioneering conforms to other existing laws and ordinances.

(d) No person may apply for or receive any ballot in any polling place, other than that in which the person is entitled to vote, nor may any person examine a ballot which any voter has prepared for voting, or solicit the voter to show the same, nor ask, nor make any arrangement, directly or indirectly, with any voter, to vote an open ballot. No person, except a commissioner of election, may receive from any voter a ballot prepared by him or her for voting. No person may receive a ballot from any person other than one of the poll clerks; nor may any person other than a poll clerk deliver a ballot to a commissioner of election to be voted by such commissioner. No voter may deliver any ballot to a commissioner of election to be voted, except the one he or she receives from the poll clerk. No voter may place any mark upon his or her ballot, or suffer or permit any other person to do so, by which it may be afterward identified as the ballot voted by him or her.

(e) Whoever violates any provision of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in jail for not more than one year, or both fined and confined.
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.

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services shall obtain as an integral and simultaneous part of every process of application for the issuance, renewal or change of address of a motor vehicle
driver’s license or official identification card pursuant to the provisions of article two, chapter seventeen-b of this code, when the division’s regional offices are open for regular business, the following information from each qualified registrant:

(1) Full name, including first, middle, last and any premarital names;
(2) Date of birth;
(3) Residence address and mailing address, if different;
(4) The applicant’s electronic signature;
(5) Telephone number, if available;
(6) Email address, if available;
(7) Political party membership, if any;
(8) Driver’s license number and last four digits of social security number;
(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements, including United States citizenship;
(10) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;
(11) Date of application; and
(12) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this
section, to the Secretary of State, who shall forward the
information to the county clerk for the relevant county to
process the newly registered voter or updated information
for the already-registered voter pursuant to law. The
Division of Motor Vehicles shall notify that applicant that
by submitting his or her signature, the applicant grants
written consent for the submission of the information
obtained and required to be submitted to the Secretary of
State pursuant to this section.

(c) Information regarding a person’s failure to sign the
driver registration application is confidential and may not be
used for any purpose other than to determine voter
registration.

(d) A qualified voter who submits the required
information or update to his or her voter registration,
pursuant to the provisions of subsection (a) of this section,
in person at a driver licensing facility at the time of applying
for, obtaining, renewing or transferring his or her driver’s
license or official identification card and who presents
identification and proof of age at that time is not required to
make his or her first vote in person or to again present
identification in order to make that registration valid.

(e) A qualified voter who submits by mail or by delivery
by a third party an application for registration on the form
used in conjunction with driver licensing is required to make
his or her first vote in person and present identification as
required for other mail registration in accordance with the
provisions of subsection (g), section ten of this article. If the
applicant has been previously registered in the jurisdiction
and the application is for a change of address, change of
name, change of political party affiliation or other
correction, the presentation of identification and first vote in
person is not required.

(f) An application for voter registration submitted
pursuant to the provisions of this section updates a previous
voter registration by the applicant and authorizes the
cancellation of registration in any other county or state in which the applicant was previously registered.

(g) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator’s identification purposes in accordance with applicable law serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

(h) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(i) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State and maintained by the Secretary of State’s office according to the retention policy adopted by the Secretary of State.

(j) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other provisions of this code.

(k) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(l) This section shall not be construed as requiring the Division of Motor Vehicles to determine eligibility for voter registration and voting.
(m) The changes made to this section during the 2016 Regular Legislative Session shall become effective on July 1, 2019, and any costs associated therewith shall be paid by the Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements of this section by February 1, 2019, it shall make a presentation to the Joint Committee on Government and Finance explaining any resources necessary to meet the requirements or any changes to the code that it recommends immediately prior to the 2019 Regular Legislative Session: Provided, That the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018 with a full and complete list of all infrastructure they require to achieve the purposes of this section.

(n) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in order to implement the requirements of this section.

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.

(a) In addition to other reporting required under this article, any member, or any candidate committee for a member of the Legislature who is a candidate for legislative office, who has a fund-raising event while the Legislature is in session, shall disclose the existence of the event and the receipt of all contributions, including the source and amounts, within five business days after the fund-raising event.

(b) The reporting requirements under this section also apply to former candidates or candidate committees for legislative office who are still holding any legislative office and who use a fund-raising event to retire or pay-off debt of a campaign account while the Legislature is in session.

(c) The reporting requirements of this section do not relieve a candidate or candidate’s committee from reporting
contributions received and disclosed in conformity with this section from reporting them as required by the regular reporting requirements as contained in section five of this article.

(d) The Secretary of State shall prepare a form for disclosure of these contributions and publish the information on the Secretary of State’s website within forty-eight hours of the Secretary of State receiving the completed form: Provided, That as an alternative, the Secretary of State is authorized to establish a means for electronic filing and disclosure.

(e) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State may propose rules and emergency rules for legislative approval relating to 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.

(a) After a surface mining permit application has been
approved pursuant to this article, but before a permit has
been issued, each operator shall furnish a penal bond, on a
form to be prescribed and furnished by the secretary,
payable to the state of West Virginia and conditioned upon
the operator faithfully performing all of the requirements of
this article and of the permit. The penal amount of the bond
shall be not less than $1,000 nor more than $5,000 for each
acre or fraction of an acre: Provided, That the minimum
amount of bond furnished for any type of reclamation
bonding shall be $10,000. The bond shall cover: (1) The
entire permit area; or (2) that increment of land within the
permit area upon which the operator will initiate and
conduct surface mining and reclamation operations within
the initial term of the permit. If the operator chooses to use
incremental bonding, as succeeding increments of surface
mining and reclamation operations are to be initiated and
conducted within the permit area, the operator shall file with
the secretary an additional bond or bonds to cover the
increments in accordance with this section: Provided,
however, That once the operator has chosen to proceed with
bonding either the entire permit area or with incremental
bonding, the operator shall continue bonding in that manner
for the term of the permit.

(b) The period of liability for bond coverage begins with
issuance of a permit and continues for the full term of the
permit plus any additional period necessary to achieve
compliance with the requirements in the reclamation plan of the permit.

(c)(1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners’ Loan Corporation; full faith and credit general obligation bonds of the State of West Virginia or other states and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the state of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.
(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator’s obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g)(1) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the state treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the secretary has obtained or applied for an NPDES permit as of the effective date of this article. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter.

(2) The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after August 3, 1977, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary may also expend an amount not to exceed ten percent of the total annual assets in both funds
to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

(3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section to any mine operator who performs reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive and may be claimed for reclamation or remediation performed on or after January 1, 2012: Provided, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may be granted unless a written application for the tax credit was submitted to the Tax Commissioner prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

(B) The amount of a reclamation tax credit granted under this subsection shall be equal to the amount that the Tax Commissioner determines, based on the project costs, as shown in the records of the secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by the mine operator, including expenditures for water treatment.

(C) To claim the credit, the mine operator shall, from time to time, file with the Tax Commissioner a written application seeking the amount of the credit earned. Within thirty days of receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the difference. Should no certification be issued within the thirty-day period, the application will be deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions of
the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of the code. Applications for certification of the proposed tax credit shall contain the information and be in the detail and form as required by the Tax Commissioner.

(h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this subdivision two, subsection (g) of this section.

(i)(1) Rate, deposits and review.

(A) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.
(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: Provided, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.
(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

(j) This special reclamation tax shall be collected by the Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(k) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(n) At the beginning of each quarter, the secretary shall advise the Tax Commissioner and the Governor of the
(o) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

§22-3-13a. Preblast survey requirements.

(a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of this article, an operator or an operator’s designee shall make the following notifications in writing to all owners and occupants of man-made dwellings or structures that the operator or operator’s designee will perform preblast surveys in accordance with subsection (e) of this section:

(1) For surface mining operations the required notifications shall be to all owners and occupants of man-made dwellings or structures within one-half mile of the permitted area or areas; and

(2) For blasting associated with permitted surface disturbance of underground mines and blasting associated with specified construction, including but not limited to, haul roads, shafts, and/or drainage structures, the operator may send a written request to the secretary asking that the required notifications be limited to all owners and occupants of man-made dwellings or structures within one-half mile of the proposed blasting area.

(b) An owner of a man-made dwelling or structure within the areas described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast survey in writing. If an occupant or owner of a
man-made dwelling or structure refuses to allow the operator or the operator’s designee access to the dwelling or structure and refuses to waive in writing the right to a preblast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the preblast survey shall indicate that access was refused, impossible or impractical. The operator or the operator’s designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. The secretary may not determine the preblast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. The operator shall send copies of all written waivers and affidavits executed pursuant to this subsection to the secretary.

(c) If a preblast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a preblast survey from the operator.

(d) An owner within the requisite area may request, from the operator, a preblast survey on structures constructed after the original preblast survey.

(e) The preblast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface mining operator and the permit number;

(4) The current general liability insurer of the surface mining operator;
(5) The name, address and telephone number of the person or firm performing the preblast survey;

(6) The current general liability insurer of the person or firm performing the preblast survey;

(7) The date of the preblast survey and the date it was mailed or delivered to the secretary;

(8) A general description of the structure and its appurtenances, including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the preblast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate preblast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate preblast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate preblast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction
technique and materials used on the structure or its appurtenances or both structure and appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the secretary which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(f) The preblast survey shall be submitted to the secretary at least fifteen days prior to the commencement of any production blasting. The secretary shall review each preblast survey as to form and completeness only and notify the operator of any deficiencies: Provided, That once all required surveys have been reviewed and accepted by the secretary, blasting may commence sooner than fifteen days after submittal. The secretary shall provide a copy of the preblast survey to the owner or occupant.

(g) The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code dealing with preblast survey
requirements and setting the qualifications for individuals and firms performing preblast surveys.

(h) The provisions of this section do not apply to the 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.

(a) The permittee may file a request with the secretary for the release of a bond or deposit. The permittee shall publish an advertisement regarding the request for release in the same manner as is required of advertisements for permit applications. A copy of the advertisement shall be submitted to the secretary as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the permittee’s approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters which the permittee has sent to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface mining operation is located, notifying them of the permittee’s intention to seek release from the bond. Any request for grade release shall also be accompanied by final maps.

(b) Upon receipt of the application for bond release, the secretary, within thirty days, taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the
pollution and the estimated cost of abating the pollution. The secretary shall notify the permittee in writing of his or her decision to release or not to release all or part of the bond or deposit within sixty days from the date of the initial publication of the advertisement if no public hearing is requested. If a public hearing is held, the secretary’s decision shall be issued within thirty days thereafter.

(c) If the secretary is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, he or she may release the bond or deposit, in whole or in part, according to the following schedule:

(1) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator’s approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area.

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the secretary shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section thirteen of this article. No part of the bond or deposit shall be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by subdivision (10), subsection (b), section thirteen of this article or until soil productivity for prime farm lands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to subdivision (15), subsection (a), section nine of this article.

Where a silt dam is to be retained as a permanent
impoundment pursuant to subdivision (8), subsection (b), section thirteen of this article, the portion of bond may be released under this subdivision so long as provisions for sound future maintenance by the operator or the landowner have been made with the secretary.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in section thirteen of this article: Provided, That no bond shall be fully released until all reclamation requirements of this article are fully met: Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

(d) If the secretary disapproves the application for release of the bond or portion thereof, the secretary shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and notifying the operator of the right to a hearing.

(e) When any application for total or partial bond release is filed with the secretary, he or she shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to the operations, has the right to file written
objections to the proposed bond release and request a hearing with the secretary within thirty days after the last publication of the permittee’s advertisement. If written objections are filed and a hearing requested, the secretary shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of the public hearing shall also be advertised by the secretary in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the secretary pursuant to this section, the secretary may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of the hearing, the secretary has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence, including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the secretary at the cost of the person requesting the transcript.

(i) The secretary shall propose rules for legislative approval during the 2018 regular session of the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of the code and revisions to the Legislative Rule entitled West Virginia Surface Mining Reclamation Rule, Title 38, Series 2 of the West Virginia Code of State Rules, to implement the revisions to this article made during the 2017 legislative session. The secretary shall specifically consider the adoption of corresponding federal standards 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.

Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section twenty-five of this article or for the disposal of pollutants or the effluent therefrom the well operator, at the time of such abandonment or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall be filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material,
except that a final cement plug shall be installed from a point one hundred feet below the surface to the surface. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot; or

(2) When such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented into the surface, the well shall be filled and securely plugged in the manner provided in subdivision (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately one hundred feet below the bottom of the coal protection string of casing. From the point the well shall be plugged according to the provisions in paragraph (1) or (2) below:
(1) A two hundred foot plug of expanding cement shall be placed in the well. From this point, the well shall be filled with mud, clay or other nonporous material to a point one hundred feet below the surface and a plug of cement shall be placed from the point one hundred feet below the surface to the surface with a monument installed therein extending thirty inches above ground level.

(2) A one hundred foot plug of expanding cement shall be placed in the well so that the top of such plug is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the secretary shall then be installed on the top of the coal protection string of casing in such a manner that will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The coal protection string of casing and the vent or other device approved by the secretary shall extend, when finally in place, a distance of not less than thirty inches above ground level and shall be permanently marked with the well number assigned by the secretary;

c) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented into the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not less than forty feet below the lowest workable coal bed. After the cement plug has been securely placed in the well, the well shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point forty feet beneath
the next overlying workable coal bed, if such there be, and
the well shall then be filled with cement from this point to a
point twenty feet above such workable coal bed, and
similarly, in case there are more overlying workable coal
beds. After the filling and plugging of the well to a point
above the highest workable coal bed, filling and plugging of
the well shall continue in the manner provided in subsection
(a) of this section to a point one hundred feet below the
surface, and a plug of cement shall be installed from the
point one hundred feet below the surface to the surface with
a monument installed therein extending thirty inches above
ground level;

(d)(1) Where the well penetrates one or more workable
coal beds and a coal protection string of casing has not been
circulated and cemented into the surface, a coal operator or
coal seam owner may request that the well be plugged in the
manner provided in subdivision (3) of this subsection rather
than by the method provided in subsection (c) of this
section. Such request (forms for which shall be provided by
the secretary) must be filed in writing with the secretary
prior to the scheduled plugging of the well, and must include
the number of the well to be plugged and the name and
address of the well operator. At the time such request is filed
with the secretary, a copy of such request must also be
mailed by registered or certified mail to the well operator
named in the request.

(2) Upon receipt of such request, the secretary shall
issue an order staying the plugging of the well and shall
promptly determine the cost of plugging the well in the
manner provided in subdivision (3) of this subsection and
the cost of plugging the well in the manner provided in
subsection (c) of this section. In making such determination,
the secretary shall take into consideration any agreement
previously made between the well operator and the coal
operator or coal seam owner making the request. If the
secretary determines that the cost of plugging the well in the
manner provided in subsection (c) of this section exceeds
the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the secretary shall grant the request of the coal operator or owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If the secretary determines that the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the secretary shall request payment into escrow of the difference between the determined costs by the coal operator or coal seam owner making the request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the well operator has waived such payment, the secretary shall grant the request of the coal operator or coal seam owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If satisfactory notice of payment into escrow, or notice that the well operator has waived such payment, is not received by the secretary within fifteen days after the request for payment into escrow, the secretary shall issue an order permitting the plugging of the well in the manner provided in subsection (c) of this section. Copies of all orders issued by the secretary shall be sent by registered or certified mail to the coal operator or coal seam owner making the request and to the well operator. When the escrow agent has received certification from the secretary of the satisfactory completion of the plugging work and the reimbursable extra cost thereof (that is, the difference between the secretary’s determination of plugging cost in the manner provided in subsection (c) of this section and the well operator’s actual plugging cost in the manner provided in subdivision (3) of this subsection), the escrow agent shall pay the reimbursable sum to the well operator or the well operator’s nominee from the payment into escrow to the extent available. The amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent’s fee, if any, shall...
be repaid to the coal owner. If the amount paid to the well
operator or the well operator’s nominee is less than the
actual reimbursable sum, the escrow agent shall inform the
coal owner, who shall pay the deficiency to the well
operator or the well operator’s nominee within thirty days.
If the coal operator breaches this duty to pay the deficiency,
the well operator shall have a right of action and be entitled
to recover damages as if for wrongful conversion of
personality, and reasonable attorney fees.

(3) Where a request of a coal operator or coal seam
owner filed pursuant to subdivision (1) of this subsection
has been granted by the secretary, the well shall be plugged
in the manner provided in subsection (a) of this section,
except that expanding cement shall be used instead of
regular hydraulic cement, to a point approximately two
hundred feet below the lowest workable coal bed. A one
hundred foot plug of expanding cement shall then be placed
in the well beginning at the point approximately two
hundred feet below the lowest workable coal bed and
extending to a point approximately one hundred feet below
the lowest workable coal bed. A string of casing with an
outside diameter no less than four and one-half inches shall
then be run into the well to a point approximately one
hundred feet below the lowest workable coal bed and such
string of casing shall be circulated and cemented into the
surface. The casing shall then be emptied of liquid from a
point approximately one hundred feet below the lowest
workable coal bed to the surface, and a vent or other device
approved by the secretary shall be installed on the top of the
string of casing in such a manner that it will prevent liquids
and solids from entering the well but will permit ready
access to the full internal diameter of the coal protection
string of casing when required. The string of casing and the
vent or other device approved by the secretary shall extend,
when finally in place, a distance of no less than thirty inches
above ground level and shall be permanently marked with
the well number assigned by the secretary. Notwithstanding
the foregoing provisions of this subdivision, if under
particular circumstances a different method of plugging is
required to obtain the approval of another governmental
agency for the safe mining through of said well, the
secretary may approve such different method of plugging if
he or she finds the same to be as safe for mining through and
otherwise adequate to prevent gas or other fluid migration
from the oil and gas reservoirs as the method above
specified.

(e) Notwithstanding anything in this section to the
contrary, where the well to be plugged is an abandoned well
that has no known responsible party and the well operator is
also a coal operator that intends to mine through the well,
the well shall, at a minimum, be plugged as provided in
subdivisions (1) and (2) of this subsection.

(1) The well will be cleaned out and prepared for
plugging or replugging as follows:

(A) If the total depth of the well is less than four
thousand feet, the operator shall completely clean out the
well from the surface to at least two hundred feet below the
base of the lowest workable coal bed, but the secretary may
require cleaning to a greater depth due to excessive pressure
within the well. If the total depth of the well is four
thousand feet or greater, the operator shall completely clean
out the well from the surface to at least four hundred feet
below the base of the lowest workable coal bed. The
operator shall provide to the secretary all information it
possesses concerning the geological nature of the strata and
the pressure of the well, and shall remove all material from
the entire diameter of the well, wall to wall;

(B) The operator shall prepare down-hole logs for each
well. The logs shall consist of a caliper survey and log(s)
suitable for determining the top, bottom, and thickness of all
coal seams and potential hydrocarbon-producing strata, as well as the location for a bridge plug. The secretary may approve the use of a down-hole camera survey in lieu of down-hole logs. In addition, the owner shall maintain a journal that describes the depth of each material encountered; the nature of each material encountered; the bit size and type used to drill each portion of the hole; the length and type of each material used to plug the well; the length of casing(s) removed, perforated or ripped, or left in place; any sections where casing was cut or milled; and any other pertinent information concerning cleaning and sealing the well. The operator shall maintain all invoices, work orders, and other records relating to all work on the well as part of the journal and provide to the secretary upon request;

(C) When cleaning, the operator shall make a diligent effort to remove all the casing in the well. If it is not possible to remove all the casing, then the operator shall take appropriate steps to ensure that the annulus between the casing and between the casings and the well walls are filled with expanding cement, with a minimum five tenths of one percent expansion upon setting, and contain no voids. If the casing cannot be removed, it must be cut or milled at all workable coal bed levels. Any casing which remains shall be perforated or ripped. If the total depth of the well is less than four thousand feet, perforations or rips are required every fifty feet from two hundred feet below the base of the lowest mineable coal bed up to one hundred feet above the uppermost workable coal bed. If the total depth of the well is four thousand feet or greater, perforations or rips are required every fifty feet from four hundred feet below the base of the lowest workable coal bed up to one hundred feet above the uppermost workable coal bed. If the operator, using a casing bond log, demonstrates to the satisfaction of the secretary that all annuli in the well are already adequately sealed with cement, then the operator shall not be required to perforate or rip the casing. When multiple
casing and tubing strings are present in the workable coal bed, any casing which remains shall be ripped or perforated and filled with expanding cement in accordance with this paragraph. The operator shall maintain a casing bond log for each casing and tubing string if used in lieu of ripping or perforating multiple strings;

(D) If the secretary concludes that the completely cleaned well emits excessive amounts of gas, the operator must place a mechanical bridge plug in the well. If the total depth of the well is less than four thousand feet, the mechanical bridge plug shall be placed in a competent stratum at least two hundred feet below the base of the lowest workable coal bed, but above the top of the uppermost hydrocarbon-producing stratum. If the total depth of the well is four thousand feet or greater, the mechanical bridge plug shall be placed in a competent stratum at least four hundred feet below the base of the lowest mineable coal bed, but above the top of the uppermost hydrocarbon-producing stratum: Provided, That the secretary may require a greater distance to set the mechanical bridge plug, regardless of the total depth of the well, based upon excessive pressure within the well. The operator shall provide the secretary with all information the operator possesses concerning the geologic nature of the strata and pressure of the well. If it is not possible to set a mechanical bridge plug, an appropriately sized packer may be used; and

(E) If the upper-most hydrocarbon-producing stratum is within three hundred feet of the base of the lowest workable coal bed, the operator shall properly place mechanical bridge plugs as described in paragraph (D) of this subdivision to isolate the hydrocarbon-producing stratum from the expanding cement plug. Nevertheless, if the total depth of the well is less than four thousand feet, the operator shall place a minimum of two hundred feet of expanding cement below the lowest workable coal bed. If the total
depth of the well is four thousand feet or greater, the operator shall place a minimum of four hundred feet of expanding cement below the lowest mineable coal bed: *Provided,* That the secretary may require a greater distance to set the mechanical bridge plug, regardless of the total depth of the well, based upon excessive pressure within the well.

(2) After the well is completely cleaned pursuant to subdivision one of this subsection, the operator shall plug or replug the well to the surface as follows:

If the total depth of the well is less than four thousand feet, the operator shall pump expanding cement slurry down the well to form a plug which runs from at least two hundred feet below the base of the lowest workable coal bed to the surface. If the total depth of the well is four thousand feet or greater, the operator shall pump expanding cement slurry down the well to form a plug which runs from at least four hundred feet below the base of the lowest workable coal bed to the surface: *Provided,* That the secretary may, regardless of the total depth of the well, require a lower depth based upon excessive pressure within the well. The expanding cement slurry will be placed in the well under a pressure of at least two hundred pounds per square inch. Portland cement shall be used to fill the area from one hundred feet above the top of the uppermost workable coal seam to the surface: *Provided,* That the secretary may require a higher distance based upon excessive pressure within the well;

(f) Any person may apply to the secretary for an order to clean out and replug a previously plugged well in a manner which will permit the safe mining through of such well. Such application shall be filed with the secretary and shall contain the well number, a general description of the well location, the name and address of the owner of the surface land upon which the well is located, a copy of or record reference to a deed, lease or other document which
entitles the applicant to enter upon the surface land, a
description of the methods by which the well was previously
plugged, and a description of the method by which such
applicant proposes to clean out and replug the well. At the
time an application is filed with the secretary, a copy shall
be mailed by registered or certified mail to the owner or
owners of the land, and the oil and gas lessee of record, if
any, of the site upon which the well is located. If no
objection to the replugging of the well is filed by any such
landowner or oil and gas lessee within thirty days after the
filing of the application, and if the secretary determines that
the method proposed for replugging the well will permit the
safe mining through of such well, the secretary shall grant
the application by an order authorizing the replugging of the
well. Such order shall specify the method by which the well
shall be replugged, and copies thereof shall be mailed by
certified or registered mail to the applicant and to the owner
or owners of the land, and the oil and gas lessee, if any, of
the site upon which such well is located. If any such
landowner or oil and gas lessee objects to the replugging of
the well, the secretary shall notify the applicant of such
objection. Thereafter, the director shall schedule a hearing
to consider the objection, which hearing shall be held after
notice by registered or certified mail to the objectors and the
applicant. After consideration of the evidence presented at
the hearing, the secretary shall issue an order authorizing the
replugging of the well if the secretary determines that
replugging of the well will permit the safe mining through
of such well. Such order shall specify the manner in which
the well shall be replugged and copies thereof shall be sent
by registered or certified mail to the applicant and objectors.
The secretary shall issue an order rejecting the application
if the secretary determines that the proposed method for
replugging the well will not permit the safe mining through
of such well;
(g) All persons adversely affected, by a determination or order of the secretary issued pursuant to the provisions of this section shall be entitled to judicial review in accordance with the provisions of articles five and six, chapter twenty-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.

(a) All authority to promulgate rules and implement water quality standards is vested in the Secretary of the Department of Environmental Protection.

(b) All meetings with the secretary or any employee of the department and any interested party which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of the rule governing water quality standards or variances thereto shall be held in accordance with the provisions of article nine-a, chapter six of this code. When the secretary is considering the form and substance of the rules governing water quality standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i) Consultations between the department’s employees or its consultants, contractors or agents; (ii) consultations with other state or federal agencies and the department’s employees or its consultants, contractors or agents; or (iii) consultations between the secretary, the department’s employees or its consultants, contractors or agents with any interested party for the purpose of collecting facts and explaining state and federal 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.
(c) In order to carry out the purposes of this chapter, the secretary shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall protect the public health and welfare, wildlife, fish and aquatic life and the present and prospective future uses of the water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof. The water quality standards of the secretary may not specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant.

(d) The secretary shall establish the antidegradation implementation procedures as required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to affect water quality. The secretary shall propose for legislative approval, pursuant to article three, chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which include specifics of the review depending upon the existing uses of the water body segment that would be affected, the level of protection or “tier” assigned to the applicable water body segment, the nature of the activity and the extent to which existing water quality would be degraded. Any final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does not become effective until that determination is approved by the Legislature through the legislative rule-making process as provided in article three, chapter twenty-nine-a of the code.

(e) All remaining variances shall be applied for and considered by the secretary and any variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control Act. At a minimum, when considering an application for a remaining variance the secretary shall consider the data and information submitted by the
applicant for the variance; and comments received at a
public comment period and public hearing. The secretary
may not grant a variance without requiring the applicant to
improve the instream water quality as much as is reasonably
possible by applying best available technology
economically achievable using best professional judgment.
Any such requirement will be included as a permit
condition. The secretary may not grant a variance without a
demonstration by the applicant that the coal remining
operation will result in the potential for improved instream
water quality as a result of the remining operation. The
secretary may not grant a variance where he or she
determines that degradation of the instream water quality
will result from the remining operation.

(f) The secretary shall propose rules measuring
compliance with the aquatic life component of West
Virginia’s narrative water quality standard requires
evaluation of the holistic health of the aquatic ecosystem
and a determination that the stream: (i) contains appropriate
trophic levels of fish, in streams that have flows sufficient
to support fish populations; and (ii) the aquatic community
is composed of benthic invertebrate assemblages sufficient
to perform the biological functions necessary to support fish
communities within the assessed reach, or, if the assessed
reach has insufficient flows to support a fish community, in
those downstream reaches where fish are present. The
secretary shall propose rules for legislative approval in
accordance with the provisions of article three, chapter
twenty-nine-a of this code that implement the provisions of
this subsection. Rules promulgated pursuant to this
subsection may not establish measurements for biologic
components of West Virginia’s narrative water quality
standards that would establish standards less protective than
legislatively-approved rules that existed at the time of
enactment of the amendments to this subsection by the
Legislature during the 2012 regular session.
CHAPTER 22A. MINERS’ HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.


Unless the context in which used clearly requires a different meaning, the following definitions apply to this chapter:

(a) General. —

(1) Accident: The term “accident” means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

(2) Agent: The term “agent” means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

(3) Approved: The term “approved” means in strict compliance with mining law, or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

(4) Face equipment: The term “face equipment” means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in an entry or room.

(5) Imminent danger: The term “imminent danger” means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(6) Mine: The term “mine” includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or
strata, which excavations are ventilated by one general air
current or divisions thereof, and connected by one general
system of mine haulage over which coal may be delivered
to one or more points outside the mine, and the surface
structures or equipment connected or associated therewith
which contribute directly or indirectly to the mining,
preparation or handling of coal, or construction thereof.

(7) Miner: The term “miner” means any individual
working in a coal mine.

(8) Operator: The term “operator” means any firm,
corporation, partnership or individual operating any coal
mine, or part thereof, or engaged in the construction of any
facility associated with a coal mine.

(9) Permissible: The term “permissible” means any
equipment, device or explosive that has been approved as
permissible by the Federal Mine Safety and Health
administration and/or the United States Bureau of Mines
and meets all requirements, restrictions, exceptions,
limitations and conditions attached to such classification by
that agency or the bureau.

(10) Person: The term “person” means any individual,
partnership, association, corporation, firm, subsidiary of a
corporation or other organization.

(11) Work of preparing the coal: The term “work of
preparing the coal” means the breaking, crushing, sizing,
cleaning, washing, drying, mixing, storing and loading of
bituminous coal or lignite and such other work of preparing
such coal as is usually done by the operator of the coal mine.

(b) Office of Miners’ Health, Safety and Training. —

(1) Board of appeals: The term “board of appeals”
means as provided for in article five of this chapter.
(2) Director: The term “director” means the Director of the Office of Miners’ Health, Safety and Training provided for in section three of this article.

(3) Mine inspector: The term “mine inspector” means a state mine inspector provided for in section eight of this article.

(4) Office: The term “office” means, when referring to a specific office, the Office of Miners’ Health, Safety and Training provided for in this article. The term “office”, when used generically, includes any office, board, agency, unit, organizational entity or component thereof.

(c) Mine areas. —

(1) Abandoned workings: The term “abandoned workings” means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term “active workings” means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term “drift” means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term “excavations and workings” means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(5) Inactive workings: The term “inactive workings” includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.
(6) Mechanical working section: The term “mechanical working section” means an area of a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working places that are generally contiguous; and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term “panel” means workings that are or have been developed off of submain entries which do not exceed three thousand feet in length.

(8) Return air: The term “return air” means a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term “shaft” means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and material, in connection with the mining of coal.

(10) Slope: The term “slope” means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term “working face” means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term “working place” means the area of a coal mine inby the last open crosscut.

(13) Working section: The term “working section” means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term “working unit” means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a
single loading machine; a continuous mining unit by a
single continuous mining machine, which is comprised of a
number of working places.

(d) *Mine personnel.* —

(1) Assistant mine foreman: The term “assistant mine
foreman” means a certified person designated to assist the
mine foreman in the supervision of a portion or the whole
of a mine or of the persons employed therein.

(2) Certified electrician: The term “certified electrician”
means any person who is qualified as a mine electrician and
who has passed an examination given by the office, or has
at least three years of experience in performing electrical
work underground in a coal mine, in the surface work areas
of an underground coal mine, in a surface coal mine, in a
noncoal mine, in the mine equipment manufacturing
industry or in any other industry using or manufacturing
similar equipment, and has satisfactorily completed a coal
mine electrical training program approved by the office or
any person who is qualified as a mine electrician in any state
that recognizes certified electricians licensed in West
Virginia.

(3) Certified person: The term “certified person”, when
used to designate the kind of person to whom the
performance of a duty in connection with the operation of a
mine shall be assigned, means a person who is qualified
under the provisions of this law to perform such duty.

(4) Interested persons: The term “interested persons”
includes the operator, members of any mine safety
committee at the mine affected and other duly authorized
representatives of the mine workers and the office.

(5) Mine foreman: The term “mine foreman” means the
certified person whom the operator or superintendent shall
place in charge of the inside workings of the mine and of the
persons employed therein.
(6) Qualified person: The term “qualified person” means a person who has completed an examination and is considered qualified on record by the office.

(7) Shot firer: The term “shot firer” means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp, and other approved detecting devices by examination and certification given him or her by the office.

(8) Superintendent: The term “superintendent” means the person who has, on behalf of the operator, immediate supervision of one or more mines.

(9) Supervisor: The term “supervisor” means a superintendent, mine foreman, assistant mine foreman or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

(e) Electrical. —

(1) Armored cable: The term “armored cable” means a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

(2) Borehole cable: The term “borehole cable” means a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.

(3) Branch circuit: The term “branch circuit” means any circuit, alternating current or direct current, connected to and leading from the main power lines.

(4) Cable: The term “cable” means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).
(5) Circuit breaker: The term “circuit breaker” means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(6) Delta connected: The term “delta connected” means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

(7) Effectively grounded: The term “effectively grounded” is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

(8) Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a portable flame-resistant cable that has passed the flame tests of the federal mine safety and health administration.

(9) Ground or grounding conductor (mining): The term “ground or grounding conductor (mining)”, also referred to as a safety ground conductor, safety ground and frame ground, means a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.

(10) Grounded (earthed): The term “grounded (earthed)” means that the system, circuit or apparatus referred to is provided with a ground.

(11) High voltage: The term “high voltage” means voltages of more than one thousand volts.

(12) Lightning arrestor: The term “lightning arrestor” means a protective device for limiting surge voltage on equipment by discharging or by passing surge current; it
prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(13) Low voltage: The term “low voltage” means up to and including six hundred sixty volts.

(14) Medium voltage: The term “medium voltage” means voltages from six hundred sixty-one to one thousand volts.

(15) Mine power center or distribution center: The term “mine power center or distribution center” means a combined transformer or distribution unit, complete within a metal enclosure from which one or more low-voltage power circuits are taken.

(16) Neutral (derived): The term “neutral (derived)” means a neutral point or connection established by the addition of a “zig-zag” or grounding transformer to a normally underground power system.

(17) Neutral point: The term “neutral point” means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.

(18) Portable (trailing) cable: The term “portable (trailing) cable” means a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

(19) Wye-connected: The term “wye-connected” means a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.
(20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer (grounding transformer)” means a transformer intended primarily to provide a neutral point for grounding purposes.

§22A-1-5. Offices continued in the Office of Miners’ Health, Safety and Training.

(a) There are hereby continued in the Office of Miners’ Health, Safety and Training the following offices:

(1) The Board of Coal Mine Health and Safety established pursuant to article six of this chapter;

(2) The Coal Mine Safety and Technical Review Committee established pursuant to article six of this chapter; and

(3) The Board of Appeals provided for pursuant to the provisions of article five of this chapter.

(b) Nothing in this article may authorize the director or the secretary of the Department of Commerce, Labor and Environmental resources to alter, discontinue or abolish any office, board or commission or the functions thereof, which are established by statute.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-59. First-aid equipment.

(a) Each operator of an underground coal mine shall maintain a supply of first-aid equipment at each of the following locations:

(1) At the mine dispatcher’s office and on the surface in close proximity to the mine entry.

(2) At the bottom of each regularly traveled slope or shaft; however, where the bottom of such slope or shaft is not more than one thousand feet from the surface, such first-
aid supplies may be maintained on the surface at the entrance of the mine.

(3) At a point in each working section not more than five hundred feet outby the active working face or faces.

(b) The first-aid equipment required to be maintained shall include at least the following:

(1) One stretcher.

(2) One broken-back board.

(3) Twenty-four triangular bandages.

(4) Eight four-inch bandage compresses.

(5) Sixteen two-inch bandage compresses.

(6) Twelve one-inch adhesive compresses.

(7) One foille.

(8) Two cloth blankets.

(9) One rubber blanket.

(10) Two tourniquets.

(11) One one-ounce bottle of aromatic spirits of ammonia.

(12) Two inflatable plastic arm splints.

(13) Two inflatable plastic leg splints.

(14) Six small splints, metal or wooden.

(15) Two cold packs.

(16) One automated external defibrillator (AED) unit.

(c) All first-aid supplies required to be maintained under the section shall be stored in suitable sanitary, dust-tight,
moisture-proof containers and such supplies shall be accessible to the miners.

(d) No first-aid material shall be removed or diverted without authorization, except in case of accident in or about the mine.

(e) On all occasions when a person becomes sick or injured underground to the extent that he or she must go to the surface, he or she shall be accompanied by one or more 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.

(a) By August 31, 2017, the director shall revise state rules promulgated pursuant to the authority of this chapter as follows:

(1) To reflect the abolishment of the West Virginia Diesel Equipment Commission and transfer of duties and responsibilities to the director, pursuant to section 301 of this article;

(2) To reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners’ Health, Safety and Training;

(3) To reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems;

(4) To permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the
20 underground mine to the surface no less than once in a twenty-four hour period;

(5) To require that records of emissions tests, 200-hour maintenance tests and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled maintenance and an independent analysis of engine oil occur at two hundred hours of engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

(6) To remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator’s cab;

(7) To modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds;

(8) To modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and

(9) To remove the requirement for eight hours of annual diesel equipment operator refresher training separate from 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.

(a) The Board of Coal Mine Health and Safety is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and one *ex officio,*
nonvoting member who are residents of this state, and who
are appointed as follows:

(1) The Governor shall appoint, by and with the advice
and consent of the Senate, three members to represent the
viewpoint of those operators in this state. When such
members are to be appointed, the Governor shall request
from the major trade association representing operators in
this state a list of three nominees for each such position on
the board. All such nominees shall be persons with special
experience and competence in health and safety. There shall
be submitted with such list a summary of the qualifications
of each nominee. If the full lists of nominees are submitted
in accordance with the provisions of this subdivision, the
Governor shall make the appointments from the persons so
nominated. For purposes of this subdivision, the major trade
association representing operators in this state is that
association which represents operators accounting for over
one half of the coal produced in mines in this state in the
year prior to the year in which the appointment is to be
made.

(2) The Governor shall appoint, by and with the advice
and consent of the Senate, three members who can
reasonably be expected to represent the viewpoint of the
working miners of this state. When members are to be
appointed, the Governor shall request from the major
employee organization representing coal miners within this
state a list of three nominees for each position on the board.
The highest ranking official within the major employee
organization representing coal miners within this state shall
submit a list of three nominees for each such position on the
board. The nominees shall have a background in health and
safety. The Governor shall make the appointments from the
requested list of nominees.

(3) All appointments made by the Governor under the
provisions of subdivisions (1) and (2) of this subsection
shall be with the advice and consent of the Senate; and
(4) The Director of the Office of Miners’ Health, Safety and Training or his or her designee shall serve as an ex officio, nonvoting member.

(b) Members serving on the board on January 1, 2017, shall continue to serve for a minimum of three years until June 30, 2020. The term is three years. Members are eligible for reappointment.

(c) Commencing on July 1, 2017, the board shall assume all powers and responsibilities of the Board of Miners’ Training, Education and Certification established pursuant to article seven of this chapter, the mine inspectors’ examining board established pursuant to article nine of this chapter, and the Mine Safety Technology Task Force established pursuant to article eleven of this chapter.

(d) The Governor shall appoint, subject to the approval of a majority of the members of the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and Safety Administrator in accordance with the provisions of section six of this article, who shall certify all official records of the board. The Health and Safety Administrator shall be a full-time officer of the Board of Coal Mine Health and Safety with the duties provided for in section six of this article. The Health and Safety Administrator shall have such education and experience as the Governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The Governor shall appoint as Health and Safety Administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The Health and Safety Administrator shall be a person who has not been during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder, contractor, consultant or employee of any coal operator, or an employee or officer of an employee organization or a spouse of any such person. The Health and Safety Administrator shall have the expertise to draft
proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(e) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the Health and Safety Administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules as may be required from time to time by this code, and as may be required to improve coal mine health and safety. The Health and Safety Administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto.

No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the director, in which event members shall be notified of the board meeting and the agenda: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules are to be finally adopted by the board, copies of such proposed rules shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules. When a member fails to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the Health and Safety Administrator shall notify the member
and the Governor of such fact. Such member shall be
removed by the Governor unless good cause for absences is
shown.

(f) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner
prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons
for each such vacancy shall be requested by and submitted to the Governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the Governor within thirty days of his or her receipt of the list of nominations.

(g) A quorum of the board is four members which shall include at least two members representing the viewpoint of operators and at least two members representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present, except that no vote of the board may be taken unless all six voting members are present.

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the “coal mine health and safety provisions of this chapter”. Such standard rules and any other rules shall be adopted by the board without regard to the provisions of chapter twenty-nine-a of this code. The Board of Coal Mine Health and Safety shall devote its time toward promulgating rules in those areas specifically directed by this chapter and those necessary to prevent fatal accidents and injuries.

(b) The board shall review such standard rules and, when deemed appropriate to improve or enhance coal mine health and safety, revise the same or develop and promulgate new rules dealing with coal mine health and safety.
(c) The board shall develop, promulgate and revise, as may be appropriate, rules as are necessary and proper to effectuate the purposes of article two of this chapter and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code:

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules may expand protections afforded by this chapter notwithstanding specific language therein, and such rules may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules promulgated by the board shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator has the power to petition the Circuit Court of Kanawha County for a determination as to whether any rule promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: Provided, That any rule properly promulgated by the board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the protection afforded miners below that provided by this chapter.

(4) The director shall cause proposed rules and a notice thereof to be posted as provided in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed rules and accompanying notice to each operator affected. A copy of such proposed rules shall be provided to any individual by the director’s request. The notice of proposed rules shall contain a summary in plain language explaining the effect of the proposed rules.
(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules to submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules with such modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the board shall release a notice specifying the proposed rules to which objections have been filed and a hearing requested.

(7) Promptly after any such notice is released by the board under subdivision (6) of this section, the board shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the board shall make findings of fact which shall be public, and may promulgate such rules with such modifications as it deems appropriate. In the event the board determines that a proposed rule should not be promulgated or should be modified, it shall within a reasonable time publish the reasons for its determination.

(8) All rules promulgated by the board shall be published in the State Register and continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants, as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and is entitled to the use of the services, facilities
and personnel of any agency, institution, school, college or university of this state.

(e) The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities.

The board shall review all reports and any recommended rules submitted by the director, receive any additional information it requests, and may, on its own initiative, investigate the circumstances surrounding a coal mining fatality or fatalities and ascertain the cause or causes of such coal mining fatality or fatalities. In order to investigate a coal mining fatality or fatalities, a majority of the board must vote in favor of commencing an investigation. Within ninety days of the receipt of the Federal Mine Safety and Health Administration’s fatal accident report and the director’s report and recommended rules, the board shall review and consider the presentation of said report and rules and the results of its own investigation, if any, and, if a majority of all voting board members determines that additional rules can assist in the prevention of the specific type of fatality, the board shall either accept and promulgate the director’s recommended rules, amend the director’s recommended rules or draft new rules as are necessary to prevent the recurrence of such fatality. If the board chooses to amend the director’s recommended rules or draft its own rules, a vote is required within one hundred twenty days as to whether to promulgate the amended rule or the rule drafted by the board: Provided, that the board may, by majority vote, find that exceptional circumstances exist and the deadline cannot be met: Provided, however, That under no circumstances shall such deadline be extended by more than a total of ninety days. A majority vote of the board is required to promulgate any such rule.

The board shall annually, not later than July 1, review the major causes of coal mining injuries during the previous calendar year, reviewing the causes in detail, and shall
promulgate such rules as may be necessary to prevent the
recurrence of such injuries.

Further, the board shall, on or before January 10, of each
year, submit a report to the Governor, President of the
Senate and Speaker of the House, which report shall
include, but is not limited to:

(1) The number of fatalities during the previous
calendar year, the apparent reason for each fatality as
determined by the Office of Miners’ Health, Safety and
Training and the action, if any, taken by the board to prevent
such fatality;

(2) Any rules promulgated by the board during the last
year;

(3) What rules the board intends to promulgate during
the current calendar year;

(4) Any problem the board is having in its effort to
promulgate rules to enhance health and safety in the mining
industry;

(5) Recommendations, if any, for the enactment, repeal
or amendment of any statute which would cause the
enhancement of health and safety in the mining industry;

(6) Any other information the board deems appropriate;

(7) In addition to the report by the board, as herein
contained, each individual member of said board has right
to submit a separate report, setting forth any views contrary
to the report of the board, and the separate report, if any,
shall be appended to the report of the board and be
considered a part thereof.

§22A-6-6. Health and Safety Administrator; qualifications;
duties; employees; compensation.

(a) The Governor shall appoint the Health and Safety
Administrator of the board for a term of employment of one
year, and the Health and Safety Administrator employed on
January 1, 2017 shall complete a three-year term until June 30, 2020, unless he or she is determined to have committed misfeasance, malfeasance or nonfeasance as referenced herein. The Health and Safety Administrator shall be entitled to have his or her contract of employment renewed on an annual basis except where such renewal is denied for cause: Provided, That the Governor has the power at any time to remove the Health and Safety Administrator for misfeasance, malfeasance or nonfeasance: Provided, however, That the board has the power to remove the Health and Safety Administrator without cause upon the concurrence of five members of the board.

(b) The Health and Safety Administrator shall work at the direction of the board, independently of the Director of the Office of Miners’ Health, Safety and Training and has such authority and shall perform such duties as may be required or necessary to effectuate this article.

(c) In addition to the Health and Safety Administrator, there shall be such other employees hired by the Health and Safety Administrator as the board determines to be necessary. The Health and Safety Administrator shall provide supervision and direction to the other employees of the board in the performance of their duties.

(d) The employees of the board shall be compensated at rates determined by the board. The salary of the Health and Safety Administrator shall be fixed by the Governor: Provided, That the salary of the Health and Safety Administrator shall not be reduced during his or her annual term of employment or upon the renewal of his or her contract for an additional term. Such salary shall be fixed for any renewed term at least ninety days before the commencement thereof.

(e) (1) Appropriations for the salaries of the Health and Safety Administrator and any other employees of the board and for necessary office and operating expenses shall be made to a budget account established for those purposes in
the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the Office of Miners’ Health, Safety and Training.

(2) Expenditures from the funds established in section three hundred ten, article two-a; section seven, article six; section four, article seven; section three, article eleven of this chapter shall be by the Health and Safety Administrator for administrative and operating expenses, such operating expenses include mine health and safety, research, education and training programs as determined by the entities.

(f) The Health and Safety Administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident.

(g) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals to address the issues raised in such study. The administrator is responsible for preparing the annual reports required by subsection (e), section four of this article and section nine of this article.

(h) The administrator shall provide administrative assistance to the The State Coal Mine Safety and Technical Review Committee, Board of Coal Mine Health and Safety, and serve as the legislative liaison for budgetary issues. The Administrator shall serve as an *ex officio*, nonvoting member on The State Coal Mine Safety and Technical Review Committee.

(i) The administrator shall submit to each board or commission for its approval, the proposed budget of the
board or commission before submitting it to the Secretary of Revenue.

(j) The administrator shall prepare and submit to the Director of the Office of Miners’ Health, Safety and Training, no less than on a quarterly basis, a report that summarizes the coal mine health and safety standard rules under consideration by the Board of Coal Mine Health and Safety, as well as the meetings and meeting agendas of the 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.

The Legislature hereby finds and declares that:

(a) The continued prosperity of the coal industry is of primary importance to the State of West Virginia;

(b) The highest priority and concern of this Legislature and all in the coal mining industry must be the health and safety of the industry’s most valuable resource - the miner;

(c) A high priority must also be given to increasing the productivity and competitiveness of the mines in this State;

(d) An inordinate number of miners, working on both the surface in surface mining and in and at underground mines, are injured during the first few months of their experience in a mine;

(e) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of West Virginia’s coal industry;

(f) Injuries can be avoided through proper miner training, education and certification;
(g) Mining is a technical occupation with various specialties requiring individualized training and education; and

(h) It is the general purpose of this article to:

(1) Require adequate training, education and meaningful certification of all persons employed in coal mines;

(2) Require certain training and education of all prospective miners and miners certified by the state;

(3) Authorize a stipend for prospective miners enrolled in this State’s miner training, education and certification program;

(4) Direct the Director of the Office of Miners’ Health, Safety and Training to apply and implement the standards set by the Board of Coal Mine Health and Safety by establishing programs for miner and prospective miner education and training; and

(5) Provide for a program of continuing miner education for all categories of certified miners.

§22A-7-3. Definitions.

Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section two, article one of this chapter have when used in this article the meaning therein assigned to them. These words include, but are not limited to, the following: Office, director, mine inspector, operator, miner, shotfirer and certified electrician.

“Board” means the Board of Coal Mine Health and Safety established by section four of this article.

“Mine” means any mine, including a “surface mine,” as that term is defined in section three, article three, chapter twenty-two of this code, and in section two, article four of
§22A-7-5. Additional powers and duties of the Board of Coal Mine Health and Safety.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification under this article or any other provision of this code. The specialties include, but are not limited to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section, the director may by rule further subdivide the classifications for certification.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty may be created by the board unless certification in a new specialty is made desirable by action of the federal government requiring certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a program of preemployment education and training to be required of miners working on the surface at underground mines who are not certified under the provisions of this article or any other provision of this code.

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis: Provided, That the standards shall be consistent with the provisions of section seven of this article. Prior to issuing the standards, the board shall conduct public hearings at which the parties who may be affected by its actions may be heard. The education and training shall be provided in a manner
(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided in this article or any other provision of this code.

(f) The board may also, from time to time, conduct any hearings and other oversight activities required to ensure full implementation of programs established by it.

(g) Nothing in this article empowers the board to revoke or suspend any certificate issued by the Director of the Office of Miners’ Health, Safety and Training.

(h) The board may, upon its own motion or whenever requested to do so by the director, consider two certificates issued by this State to be of equal value or consider training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the director, or by the provisions of this code.

(i) As part of the annual training required by this section, the board shall include training of certified persons and other miners, instruction on miners’ rights as they relate to the operation of unsafe equipment as provided in section seventy-one, article two of this chapter, his or her right to withdrawal from unsafe conditions as provided in section seventy-one-a of article two of this chapter and his or her rights under section twenty-two, article one of this chapter.

§22A-7-5a. Study of miner training and education.

The Board of Coal Mine Health and Safety is directed to conduct a study of the overall program of education, training and examination associated with the various miner specialties requiring certification under this article or any other provision of this code. The study shall identify ways
to enhance miner education and training to adequately reflect technological advances in coal mining techniques and best practices used in modern coal mines, and improve supervision of apprentice miners. Furthermore, the board shall place particular emphasis in its study on ways to improve education and training in the areas of proper mine ventilation, methane monitoring and equipment deenergization, fire-boss procedures and overall core mining competencies.

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

(a) An underground mine foreman-fire boss certified pursuant to this article on or after the effective date of this section shall complete the continuing education requirements in this section within two years of their certification and every two years thereafter. The continuing education requirements of this section may not be satisfied by the completion of other training requirements mandated by the provisions of this chapter.

(b) In order to receive continuing education credit pursuant to this section, a mine foreman-fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course approved by the board and taught by a qualified instructor approved by the director. The mine foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The mine foreman-fire boss shall submit documentation to the office certified by the instructor that indicates the required continuing education has been completed prior to the deadlines set forth in this subsection: Provided, That a mine foreman-fire boss may submit documentation of continuing education completed in another state for approval and acceptance by the board.

(c) The mine foreman-fire boss shall complete at least eight hours of continuing education every two years.
(d) The content of the continuing education course shall include, but not be limited to:

(1) Selected provisions of this chapter and 30 U. S. C. § 801, et seq.;

(2) Selected provisions of the West Virginia and federal underground coal mine health and safety rules and regulations;

(3) The responsibilities of a mine foreman-fire boss;

(4) Selected policies and memoranda of the Office of Miners’ Health, Safety and Training, the Board of Coal Mine Health and Safety, and from any safety analysis performed by the company;

(5) A review of fatality and accident trends in underground coal mines; and

(6) The board shall solicit input from mining companies on the substance of the training and discuss how the training shall be scheduled during the year.

(e) The board may approve alternative training programs tailored to specific mines.

(f) A mine foreman-fire boss who fails to complete the requirements of this section shall have his or her certification suspended pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the Board of Appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the Board of Appeals may revoke the mine
foreman-fire boss’ certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: Provided, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the State, based on demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity: Provided, That the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked.

ARTICLE 9. MINE INSPECTORS’ EXAMINING BOARD.

§22A-9-1. Mine Inspectors’ Examining Board abolished and duties imposed upon the Board of Coal Mine Health and Safety.

The Mine Inspectors’ Examining Board is hereby abolished. All duties and responsibilities imposed upon the Mine Inspectors’ Examining Board are transferred and hereby imposed upon the Board of Coal Mine Health and Safety. On the effective date of the reenactment of this article and section of the code, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the Board of Coal Mine Health and Safety.
In addition to other duties expressly set forth elsewhere in this article, the Board of Coal Mine Health and Safety shall:

(1) Establish, and from time to time, revise forms of application for employment as mine inspectors, which shall include the applicant’s social security number, and forms for written examinations to test the qualifications of candidates for that position;

(2) Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearing for removal of inspectors, required to be held by section twelve, article one of this chapter. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request. The board shall determine whether applicants have the necessary experience to take the mine inspector examination, and the examination of candidates for appointment as a mine inspector shall be conducted by the board and it shall rank all applicants;

(3) Prepare and certify to the Director of the Office of Miners’ Health, Safety and Training a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the Director of the Office of Miners’ Health, Safety and Training a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment; (c) who have been passed over for appointment for three years; (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for
appointment as mine inspector; or (e) who, in the judgment of the board, should be removed from the register for good cause by the board;

(4) The board shall keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for a period of two years. Specimens of the examinations given, together with the correct solution of each question, shall be preserved;

(5) The board shall issue a letter or written notice of qualification to each successful eligible candidate;

(6) The Board of Coal Mine Health and Safety shall hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of this article;

(7) The board shall hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of section four, article one of this chapter: Provided, That an aggrieved inspector, in order to appeal from any order of suspension, shall file such appeal in writing with the Board of Coal Mine Health and Safety not later than ten days after receipt of notice of suspension. On such appeal the board shall affirm the act of the director unless it be satisfied from a clear preponderance of the evidence that the director has acted arbitrarily;

(8) The board and office shall make an annual report to the Governor and the director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-1. Legislative findings, purposes and intent.

The Legislature hereby finds and declares:
(1) That the first priority and concern of all persons in the coal mining industry must be the health and safety of its most precious resource - the miner;

(2) That in furtherance of this priority, the provisions of article two of this chapter are designed to protect the health and safety of this State’s coal miners by requiring certain minimum standards for, among other things, certain health and safety technology used by each underground miner;

(3) That the proper implementation of this technology in West Virginia’s underground mines would benefit from the specialized oversight of persons with experience and competence in coal mining, coal mine health and safety and the expanding role of technology; and

(4) That, in furtherance of provisions of this section, it is the intent of the Legislature to direct that the Board of Coal Mine Health and Safety, on a continuous basis, evaluate and study issues relating to the commercial availability and functional and operational capability of existing and emerging technologies in coal mine health and safety, as well as issues relating to the implementation, compliance and enforcement of regulatory requirements governing the technologies.


(a) The Mine Safety Technology Task Force hereby abolished. All duties and responsibilities imposed upon the Mine Safety Technology Task Force are transferred and hereby imposed upon the Board of Coal Mine Health and Safety. On the effective date of the reenactment of this article and section of the code, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the Board of Coal Mine Health and Safety.

§22A-11-3. The Board of Coal Mine Health and Safety’s duties regarding mine technology.
(a) The board shall provide technical and other assistance to the office related to the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two of this chapter, as amended and reenacted during the regular session of the Legislature in 2006 and requirements for other mine safety technologies.

(b) The board, working in conjunction with the director, shall continue to study issues regarding the commercial availability, the functional and operational capability and the implementation, compliance and enforcement of the following protective equipment:

1. Self-contained self-rescue devices, as provided in subsection (f), section fifty-five, article two of this chapter;

2. Wireless emergency communication devices, as provided in subsection (g), section fifty-five, article two of this chapter;

3. Wireless emergency tracking devices, as provided in subsection (h), section fifty-five, article two of this chapter; and

4. Any other protective equipment required by this chapter or rules promulgated in accordance with the law that the director determines would benefit from the expertise of the task force.

(c) The board shall on a continuous basis study, monitor and evaluate:

1. The potential for enhancing coal mine health and safety through the application of existing technologies and techniques;

2. Opportunities for improving the integration of technologies and procedures to increase the performance and survivability of coal mine health and safety systems;
(3) Emerging technological advances in coal mine health and safety; and

(4) Market forces impacting the development of new technologies, including issues regarding the costs of research and development, regulatory certification and incentives designed to stimulate the marketplace.

(d) On or before July 1 of each year, the board shall submit a report to the Governor and the director that shall include, but not be limited to:

(1) A comprehensive overview of issues regarding the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two of this chapter, or rules promulgated in accordance with the law;

(2) A summary of any emerging technological advances that would improve coal mine health and safety;

(3) Recommendations, if any, for the enactment, repeal or amendment of any statute which would enhance technological advancement in coal mine health and safety; and

(4) Any other information the board considers appropriate.

(e) In performing its duties, the board shall, where possible, consult with, among others, mine engineering and mine safety experts, radio communication and telemetry experts and relevant state and federal regulatory personnel.

(f) Appropriations to the board and to effectuate the purposes of this article shall be made to one or more budget accounts established for that purpose.

(g) The board shall annually compile a proposed list of approved innovative mine safety technologies and transmit the list to the Director of the Office of Miners’ Health,
§22A-11-4. Approval of devices.

Prior to approving any protective equipment or device that has been evaluated by the board pursuant to the provisions of subsection (b), section three of this article, the director shall consult with the board and review any applicable written reports issued by the board and the findings set forth in the reports and shall consider the findings in making any approval determination.

§22A-11-5. Existing state rules to be revised.

By August 31, 2017, all existing state rules promulgated pursuant to the authority of this chapter shall be revised to reflect the changes in this chapter enacted by the Legislature 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 land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

   1.1. Except as provided elsewhere in this article, within six months after a horizontal well is drilled and completed on a well pad designed for a single horizontal well, the operator shall fill all the pits and impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner that allows the impoundment to remain open for the use and benefit of the surface owner (i.e. a farm pond as described in section nine of this article) and remove all concrete bases, drilling supplies and drilling equipment: *Provided*, That impoundments or pits for which certificates have been approved pursuant to section nine of this article shall be reclaimed at a time and in a manner as provided in the applicable certificate and said section. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the horizontal well in accordance with the erosion and sediment control plan. No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed and properly disposed of from any pit that is retained so the pit is kept reasonably free of salt water and oil. Pits may not be left open permanently.

   1.2. For well pads designed to contain multiple horizontal wells, partial reclamation shall begin upon completion of the construction of the well pad. For purposes
of this section, the term “partial reclamation” means grading or terracing and planting or seeding the area disturbed that is not required in drilling, completing or producing any of the horizontal wells on the well pad in accordance with the erosion and sediment control plan. This partial reclamation satisfies the reclamation requirements of this section: Provided, That the maximum period in which partial reclamation satisfies the reclamation requirements of this section is five years from completion of the construction of the well pad. For purposes of this subdivision, construction of a well pad will be deemed to be complete twelve months after construction is commenced if construction of the well pad is not actually completed prior to that date. Within six months after expiration of the five-year maximum partial reclamation period, the operator shall complete final reclamation of the well pad as set forth in this subsection.

(3) Within six months after a horizontal well that has produced oil or gas is plugged or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment and any oil, salt water and debris and fill any remaining excavations. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

(4) The operator shall reclaim the area of land disturbed in siting, drilling, completing or producing the horizontal well in accordance with the erosion and sediment control plans approved by the secretary or the secretary’s designee pursuant to this article.

(b) The secretary, upon written application by an operator showing reasonable cause, may extend the period within which reclamation must be completed, but not to exceed a further six-month period. If the secretary refuses to approve a request for extension, the refusal shall be by order, which may be appealed pursuant to the provisions of subdivision (23), subsection (a), section five of this article.
CHAPTER 88


[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 and implement water quality standards is vested in the 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.
(b) All meetings with the secretary or any employee of the department and any interested party which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of the rule governing water quality standards or variances thereto shall be held in accordance with article nine-a, chapter six of this code. When the secretary is considering the form and substance of the rules governing water quality standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i) Consultations between the department’s employees or its consultants, contractors or agents; (ii) consultations with other state or federal agencies and the department’s employees or its consultants, contractors or agents; or (iii) consultations between the secretary, the department’s employees or its consultants, contractors or agents with any interested party for the purpose of collecting facts and explaining state and federal requirements relating to a site specific change or variance.

(c) In order to carry out the purposes of this chapter, the secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall protect the public health and welfare, wildlife, fish and aquatic life and the present and prospective future uses of the water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof. The water quality standards of the secretary may not specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant. For implementing human health criteria for the protection of drinking water, the Secretary shall calculate permit limits using the harmonic mean flow and may determine the point of compliance for a permittee’s discharge pursuant to the mixing zone provisions of the Legislative rule entitled Requirements Governing Water Quality Standards, C.S.R. 2: Provided, That the Secretary may allow mixing zones to overlap, but not to go beyond a point one-half mile upstream of a public water supply. At locations where
mixing zones are allowed to overlap, the Secretary shall require permittees to indicate on their required signage an indication that mixing zones overlap in a particular vicinity.

(d) The secretary shall establish the antidegradation implementation procedures as required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to affect water quality. The secretary shall propose for legislative approval, pursuant to article three, chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which include specifics of the review depending upon the existing uses of the water body segment that would be affected, the level of protection or “tier” assigned to the applicable water body segment, the nature of the activity and the extent to which existing water quality would be degraded. Any final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does not become effective until that determination is approved by the Legislature through the legislative rule-making process as provided in article three, chapter twenty-nine-a of the code.

(e) All remining variances shall be applied for and considered by the secretary and any variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control Act. At a minimum, when considering an application for a remining variance the secretary shall consider the data and information submitted by the applicant for the variance; and comments received at a public comment period and public hearing. The secretary may not grant a variance without requiring the applicant to improve the instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment. Any such requirement shall be included as a permit condition. The secretary may not grant a variance without a demonstration by the applicant that the coal remining operation will result in the potential for improved instream water quality as a result of the remining operation. The secretary may not grant a variance where he or she determines that degradation of the instream water quality will result from the remining operation.
(f) The secretary shall propose rules measuring compliance with the biologic component of West Virginia’s narrative water quality standard requires evaluation of the holistic health of the aquatic ecosystem and a determination that the stream: (i) Supports a balanced aquatic community that is diverse in species composition; (ii) contains appropriate trophic levels of fish, in streams that have flows sufficient to support fish populations; and (iii) the aquatic community is composed of benthic invertebrate assemblages sufficient to perform the biological functions necessary to support fish communities within the assessed reach, or, if the assessed reach has insufficient flows to support a fish community, in those downstream reaches where fish are present. The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that implement the provisions of this subsection. Rules promulgated pursuant to this subsection may not establish measurements for biologic components of West Virginia’s narrative water quality standards that would establish standards less protective than requirements that exist at the time of enactment of the amendments to this subsection by the Legislature during the 2012 regular session.

CHAPTER 89


[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.

For purposes of this article:

1. “Aboveground storage tank” or “tank” or “AST” means a device made to contain an accumulation of more than one thousand three hundred twenty gallons of fluids that are liquid at standard temperature and pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support, more than ninety percent of the capacity of which is above the surface of the ground, and includes all ancillary pipes and dispensing systems up to the first point of isolation. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for three hundred sixty-five or more days. A device meeting this definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. §265.201 is included in this definition but is not a regulated tank. Notwithstanding any other provision of this code to the contrary, the following categories of devices are not subject to the provisions of this article:

2. (A) Shipping containers that are subject to state or federal laws or regulations governing the transportation of hazardous materials, including, but not limited to, railroad freight cars subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R. Parts 172, 173 or 174;
(B) Barges or boats subject to federal regulation under the United States Coast Guard, United States Department of Homeland Security, including, but not limited to, federal regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to other federal law governing the transportation of hazardous materials;

(C) Swimming pools;

(D) Process vessels;

(E) Devices containing drinking water for human or animal consumption, surface water or groundwater, demineralized water, noncontact cooling water or water stored for fire or emergency purposes;

(F) Devices containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

(G) Except when located in a zone of critical concern, a device located on a farm, the contents of which are used exclusively for farm purposes and not for commercial distribution.

(H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier, chlorine contact chamber, batch reactor, etc.);

(I) Empty tanks held in inventory or offered for sale;

(J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
(K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to oil or gas production and gathering operations;

(L) Electrical equipment such as transformers, circuit breakers and voltage regulator transformers;

(M) Devices having a capacity of two hundred ten barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern; and

(N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern: Provided, That all such devices exempted under subdivisions (M) and (N) of this subsection must still meet the registration requirements contained in section four of this article, the notice requirements contained in section ten of this article, and the signage requirements contained in section eleven of this article.

(2) “Department” means the West Virginia Department of Environmental Protection.

(3) “First point of isolation” means the valve, pump, dispenser or other device or equipment on or nearest to the tank where the flow of fluids into or out of the tank may be shut off manually or where it automatically shuts off in the event of a pipe or tank failure.

(4) “Nonoperational storage tank” means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(5) “Operator” means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.
(6) “Owner” means a person who holds title to, controls or owns an interest in an aboveground storage tank, including the owner immediately preceding the discontinuation of its use. “Owner” does not mean a person who holds an interest in a tank for financial security unless the holder has taken possession of and operated the tank.

(7) “Person”, “persons” or “people” means any individual, trust, firm, owner, operator, corporation or other legal entity, including the United States government, an interstate commission or other body, the state or any agency, board, bureau, office, department or political subdivision of the state, but does not include the Department of Environmental Protection.

(8) “Process vessel” means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process or in which a biological, chemical or physical change in the material occurs. This does not include tanks used for storage of materials prior to their introduction into the production process or for the storage of finished products or by-products of the production process.

(9) “Public groundwater supply source” means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine or other primary sources of water supplies which are found underneath the surface of the state.

(10) “Public surface water supply source” means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other primary sources of water supplies which are found on the surface of the state.

(11) “Public surface water influenced groundwater supply source” means a source of water supply for a public
water system which is directly drawn from an underground well, underground river or stream, underground reservoir or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

(12) “Public water system” means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include:

(i) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a bathhouse located on coal company property solely for the use of its employees or a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.
(13) “Regulated level 1 aboveground storage tank” or “level 1 regulated tank” means:

(A) An AST located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area, or any AST system designated by the secretary as a level 1 regulated tank; or

(B) An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance” (42 U. S. C. § 9601(14)); or is on EPA’s “Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act (CAA)” (known as “the List of Lists”) as provided by 40 C.F. R. §§ 355, 372, 302, and 68) in a concentration of one percent or greater, regardless of the AST’s location, except ASTs containing petroleum are not “level 1 regulated tanks” based solely upon containing constituents recorded on the CERCLA lists; or,

(C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or location.

(14) “Regulated level 2 aboveground storage tank” or “level 2 regulated tank” means an AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

(15) “Regulated aboveground storage tank” or “regulated tank” means an AST that meets the definition of a level 1 or level 2 regulated tank.

(16) “Release” means any spilling, leaking, emitting, discharging, escaping, or leaching of fluids from an aboveground storage tank into the waters of the state or escaping from secondary containment.
(17) “Secondary containment” means a safeguard applied to one or more aboveground storage tanks that prevents the discharge into the waters of the state of the entire capacity of the largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary containment, the barrier and containment field must be sufficiently impervious to contain fluids in the event of a release, and may include double-walled tanks, dikes, containment curbs, pits or drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or holding pond. Earthen dikes and similar containment structures must be designed and constructed to contain, for a minimum of seventy-two hours, fluid that escapes from a tank.

(18) “Secretary” means the Secretary of the Department of Environmental Protection, or his or her designee.

(19) “Source water protection area” for a public groundwater supply source is the area within an aquifer that supplies water to a public water supply well within a five-year time-of-travel, and is determined by the mathematical calculation of the locations from which a drop of water placed at the edge of the protection area would theoretically take five years to reach the well.

(20) “Zone of critical concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the intake. The width of the zone of critical concern is one thousand feet measured horizontally from each bank of the principal stream and five hundred feet
measured horizontally from each bank of the tributaries
draining into the principal stream.

(21) “Zone of peripheral concern” for a public surface
water supply source and for a public surface water
influenced groundwater supply source is a corridor along
streams within a watershed that warrants scrutiny due to its
proximity to the surface water intake and the intake’s
susceptibility to potential contaminants within that corridor.
The zone of peripheral concern is determined using a
mathematical model that accounts for stream flows,
gradient and area topography. The length of the zone of
peripheral concern is based on an additional five-hour time-
of-travel of water in the streams beyond the perimeter of the
zone of critical concern, which creates a protection zone of
ten hours above the water intake. The width of the zone of
peripheral concern is one thousand feet measured
horizontally from each bank of the principal stream and five
hundred feet measured horizontally from each bank of the
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, Pethtel, 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.

(a) Section nineteen of this article does not apply to any estate which joint tenants have as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it manifestly appears from the tenor of the instrument that it was intended that the part of the one dying should then belong to the others. Neither shall it affect the
mode of proceeding on any joint judgment or decree in favor of, or on any contract with, two or more, one of whom dies.

(b) When the instrument of conveyance or ownership in any estate, whether real estate or tangible or intangible personal property, links multiple owners together with the disjunctive “or,” such ownership shall be held as joint tenants with the right of survivorship, unless expressly stated otherwise.

(c) A person convicted of violating the provisions of section one or three, article two, chapter sixty-one of this code as a principal, aider and abettor or accessory before the fact, or convicted of a similar provision of law of another state or the United States, or who has been convicted of an offense causing the death of an incapacitated adult set forth in section twenty-nine-a, article two, chapter sixty-one of this code, as a principal, aider and abettor or accessory before the fact, or convicted of a similar provision of law of another state or the United States, may not take or acquire any real or personal property by survivorship pursuant to this section when the victim of the criminal offense was a joint holder of title to the property. The property to which the convicted person would otherwise have been entitled shall go to the person or persons who would have taken the property if the convicted person had predeceased the victim.

(d) A person who has been convicted of an offense of abuse or neglect of an incapacitated adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense of financial exploitation of an elderly person, protected person or an incapacitated adult pursuant to section twenty-nine–b of that article, or convicted of a similar provision of law of another state or the United States, may not take or acquire any real or personal property by survivorship pursuant to this section, when the victim of the criminal offense is a joint holder of the title to the property. The money or property which the person would have otherwise have received shall go to the person or persons who would have taken the money or property if the convicted person had predeceased the victim. This subsection does not apply if, after the conviction, the victim of the offense, if competent,
executes a recordable instrument, sworn to, notarized and
witnessed by two persons that would be competent as
witnesses to a will of the victim, expresses a specific intent to
allow the person so convicted to retain his or her tenancy in the
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.

(a) A person who has been convicted of feloniously
killing another, or of conspiracy in the killing of another, may
not take or acquire any money or property, real or personal,
or interest in the money or property, from the one killed or
conspired against, either by descent and distribution, or by
will, or by any policy or certificate of insurance, or otherwise;
but the money or the property to which the convicted person
would otherwise have been entitled shall go to the person or
persons who would have taken the money or property if the
convicted person had been dead at the date of the death of the
one killed or conspired against, unless by some rule of law or
equity the money or the property would pass to some other
person or persons.

(b) A person who has been convicted of an offense
causing the death of an incapacitated adult set forth in section
twenty-nine-a, article two, chapter sixty-one of this code, or
convicted of a similar provision of law of another state or the
United States, may not take or acquire any money or
property, real or personal, or interest in the money or
property, from the victim decedent, either by descent and
distribution, or by will, or by any policy or certificate of
insurance, or otherwise; but the money or the property to
which the convicted person would otherwise have been
entitled shall go to the person or persons who would have
taken the money or property if the convicted person had been
dead at the date of the death of the decedent, unless by law
the money or the property would pass to some other person
or persons.
(c) A person who has been convicted of an offense of abuse or neglect of an incapacitated adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense of financial exploitation of an elderly person, protected person or incapacitated adult pursuant to section twenty-nine–b, article two, chapter sixty-one of this code, or convicted of a similar provision of law of another state or the United States, may not take or acquire any money or property, real or personal, or any interest in the money or property, from the victim of the offense, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise. The money or the property to which the convicted person would otherwise have been entitled shall go to the person or persons who would have taken the money or property if the convicted person had been dead at the date of the death of the victim, unless by law the money or the property would pass to some other person or persons. This subsection does not apply if, after the conviction, the victim of the offense, if competent, executes a recordable instrument, sworn to, notarized and witnessed by two persons that would be competent witnesses to a will of the victim, expresses a specific intent to allow the convicted person to inherit or otherwise receive the money, estate or other 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.

(a) The managing entity has a lien on a timeshare period for any assessment levied against that timeshare period from the date such assessment becomes due.

(b) The managing entity may bring an action in its name to foreclose a lien for assessments, in the manner a mortgage of real property is foreclosed.
(c) The 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: Provided, That a trustee sale shall be effectuated as provided in section fifteen-a, article nine, chapter thirty-six of this code.

(d) In addition to the remedies in subsections (b) and (c) of this section, the managing entity may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. However, in the case of a timesharing plan in which no interest in real property is conveyed, the managing entity may bring an action under chapter forty-six of this code.

(e) The lien is effective from the date of recording a claim of lien in the public records of the county or counties in which the accommodations or facilities constituting the timesharing plan are located. The claim of lien shall state the name of the timesharing plan and identify the timeshare period for which the lien is effective, state the name of the purchaser, state the assessment amount due and state the due dates. The lien is effective until satisfied or until barred by law. The claim of lien may include only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

(f) A judgment in any action or suit brought under this section shall include costs and reasonable attorney’s fees for the prevailing party.

(g) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for the filing of a lien pursuant to the mechanic’s lien law against the timeshare unit of any timeshare period owner not expressly consenting to or requesting the labor or materials.
(h) The seller, initially, and thereafter the managing entity, shall be responsible for obtaining insurance to protect the accommodations and facilities of the timesharing plan in an amount equal to the replacement cost of such accommodations and facilities.

(i) Notwithstanding any provision in this article, the lien granted pursuant to this section shall not have priority over any voluntarily granted lien or security interest in the timeshare estate.

(j) A copy of each policy of insurance in effect shall be made available for reasonable inspection by purchasers and their authorized agents.

§36-9-15a. Trustee’s sale of timeshare estates.

(a) A managing entity that desires to use a trustee sale shall prepare, execute and acknowledge a notice of trustee sale which shall include the following:

(1) The time and place of sale;

(2) The names of the parties to the deed under which it will be made;

(3) The date of the deed;

(4) The office and book in which it is recorded;

(5) The terms of sale;

(6) The nature and amount of the owner’s current delinquency;

(7) The legal description of the owner’s timeshare estate;

(8) The name and address of the association or other managing entity; and
(9) The name and address of the trustee designated by the association or managing entity to conduct the trustee sale.

(b) The managing entity shall record the notice of trustee sale with the clerk of the county commission of the county in which the timeshare estate is located and shall mail by certified mail, return receipt requested, a copy of the notice of trustee sale to the owner listed in the notice at the last address for each delinquent timeshare period according to the records of the managing entity, and, to any holder of a lien or security interest against the timeshare estate being sold, other than the state and the managing entity. To the extent the owner is unable to be located, notice under this subsection is satisfied by notice by publication as provided in subsection (c) of this section.

(c) At least thirty days prior to the date of the trustee sale, the notice of trustee sale shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county where the property is located.

(d) A trustee appointed in a notice of delinquency may conduct a trustee sale of a timeshare estate under this section. The recording of a notice of trustee sale shall satisfy all requirements for the trustee to appear in the chain of title for the timeshare estate in order for the trustee to be entitled to issue a trustee deed on completion of a trustee’s sale for the timeshare estate.

(e) If the delinquencies identified in a notice of trustee sale are not cured within thirty days after the managing entity mails the notice of trustee sale pursuant to subsection (b) of this section, and publication is made under subsection (c) of this section, the managing entity may cause the trustee to conduct a trustee’s sale of the delinquent owner’s timeshare estate at public auction.
(f) The trustee’s sale may include multiple timeshare estates owned by an owner if the owner is delinquent in payment of assessments for all of the timeshare estates included in the trustee’s sale proceeding. The trustee’s sale may include timeshare estates owned by multiple owners if the notice of trustee’s sale provides all information required by this section for each owner and timeshare estate and each timeshare estate is sold separately.

(g) This section shall not apply to any timeshare property if the timeshare instrument expressly mandates that judicial foreclosure is the sole method for the managing entity to foreclose or liquidate a lien securing payment of assessments due to the managing entity.

(h) When a sale of property is made under any trustee deed, there shall, within two months after the sale, be returned by the trustee, to the clerk of the county commission of the county wherein such deed may have been first recorded, an inventory of the property sold and an account of the sale. The clerk of the county commission shall record the same, as provided in section nine, article one, chapter thirty-eight of this code. When a report of the sale of the property sold pursuant to a trustee deed is placed on record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include in a disclosure form submitted with and made a part of the report of sale the information identified in section eight-a, article one, chapter thirty-eight of this code, to the extent applicable.

(i) If notice is given as provided in this section, no action or proceeding to set aside a trustee sale due to the failure to follow any notice, service, process or other procedural requirement relating to a sale of property under a timeshare instrument, shall be filed or commenced more than one year from the date of the sale.
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.

(a) When a trust deed to secure a debt or obligation does not by its terms prescribe a method for substitution, the party secured by the trust deed, or any surety indemnified by the deed, or the assignee or personal representative of any secured party or surety may, if there is a death, removal, declination, resignation, refusal or inability of the original trustee or trustees named in the instrument, substitute a trustee or trustees in his or her, or its place by a writing duly signed and acknowledged and recorded in the office of the clerk of the county commission where the real estate covered by the trust deed is situate.

(b) When a substitution is made under this section of a trustee or trustees of a trust deed securing a debt or obligation, the substitution is effected when the party secured, or a surety indemnified by the deed, or the assignee or personal representative of any such secured party or surety has deposited true copies of the notice of the substitution in the United States mail, first class postage prepaid, addressed to the last known addresses of the grantor or grantors or any other person owing the debt or obligation, and has presented the original of the notice to the
clerk of the county commission in whose office the trust deed is recorded, causing the notice to be recorded and indexed in a general lien book or other appropriate book in which trust deeds or assignments of trust deeds are recorded. There shall be appended to the notice presented for recording a certificate by the party making the substitution, certifying that copies of the notice were mailed as required by this subsection and showing the date of the mailing.

CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-103. Definitions.

In this chapter:

(a) “Action”, with respect to an act of a trustee, includes a failure to act.

(b) “Ascertainable standard” means a standard relating to an individual’s health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(c) “Beneficiary” means a person that:

(1) Has a present or future beneficial interest in a trust, vested or contingent;

(2) In a capacity other than that of trustee, holds a power of appointment over trust property; or

(3) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.

(d) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection (a), section four hundred five, article four of this chapter.
(e) “Conservator” means a person appointed by the court to administer the estate and financial affairs of a protected person.

(f) “Court” means a court of this state having proper jurisdiction under section two hundred three, article two of this chapter, and venue under section two hundred four of said article.

(g) “Current beneficiary” means a beneficiary that, on the date the beneficiary’s qualification is determined, is a distributee or permissible distributee of trust income or principal.

(h) “Environmental law” means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

(i) “Grantor” means a person, including a testator, who creates, or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(j) “Guardian” means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health and welfare of a minor. The term does not include a guardian ad litem.

(k) “Interested person” means heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust or the property in a trust. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
(l) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

(m) “Internal Revenue Code” or “Internal Revenue Code of 1986” has the same meaning as when used in a comparable context in the laws of the United States then in effect relating to income, estate, generation-skipping transfer and other taxes including all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature in section nine, article twenty-one, chapter eleven of this code.

(n) “Jurisdiction” with respect to a geographic area, includes a state or country.

(o) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, unincorporated nonprofit association, charitable organization, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

(p) “Power of withdrawal” means a presently exercisable general power of appointment other than a power:

1. Exercisable by a trustee and limited by an ascertainable standard; or

2. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(q) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable or any interest therein.

(r) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined:
(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) of this subdivision terminated on that date without causing the trust to terminate; or

(3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

"Revocable", as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

"Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

"Terms of a trust" means the manifestation of the grantor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

"Trust instrument" means a writing, including a will, executed by the grantor that contains terms of the trust, including any amendments thereto.

"Trustee" includes an original, additional, successor trustee and a cotrustee.

"Writing" or “written instrument” does not include an electronic record or electronic signature as provided in chapter thirty-nine-a of this code.
§44D-1-113. Insurable interest of trustee.

(a) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(1) The insured is:

(A) A grantor of the trust; or

(B) An individual in whom a grantor of the trust has, or would have had if living at the time the policy was issued, an insurable interest as provided by the provisions of section two, article six, chapter thirty-three of this code; and

(2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have an insurable interest in the life of the insured as provided by the provisions of section two, article six, chapter thirty-three of this code.

(b) For purposes of this section, the term “grantor” means a person that executes a trust instrument. The term 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.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, upon petition by the trustee or a person having a special interest in the trust, the court may select one or more charitable purposes
or beneficiaries. The selection must be consistent with the grantor’s intention to the extent it can be ascertained.

(c) The grantor of a charitable trust, trustee or a person having a special interest in the trust, may maintain a proceeding to enforce the trust.

(d) This section is not intended to override the provisions of section four, article one, chapter thirty-five of this code or section two, article two of said chapter, concerning conveyances, devises, dedications, gifts or bequests to religious organizations, and to the extent there is a conflict with those sections, this section controls.

§44D-4-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of a noncharitable trust property having a total value less than $200,000 may terminate the trust, without the necessity of court approval, if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

ARTICLE 5. CREDITOR’S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

§44D-5-503b. Definitions.

As used in this article, unless the context requires a different meaning:
(a) “Qualified trustee” means any person who is a natural person residing within the state or a legal entity authorized to engage in trust business within the state and who maintains or arranges for custody within the state of some or all of the property that has been transferred to the trust by the grantor, maintains records within the state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation within the state of fiduciary income tax returns for the trust, or otherwise materially participates within the state in the administration of the trust. A trustee is not a qualified trustee if such trustee’s authority to make distributions of income or principal or both are subject to the direction of someone who, were that person a trustee of the trust, would not meet the requirements to be a qualified trustee.

(b) “Independent qualified trustee” means a qualified trustee who is not, and whose actions are not, subject to direction by:

1. The grantor;
2. Any natural person who is not a resident of the state;
3. Any entity that is not authorized to engage in trust business within the state;
4. The grantor’s spouse;
5. A parent of the grantor;
6. Any descendant of the grantor; or
7. A sibling of the grantor.

(c) “Qualified interest” means a grantor’s interest in a qualified self-settled spendthrift trust, to the extent that such interest entitles the grantor to receive distributions of income, principal, or both, in the sole discretion of an independent qualified trustee. A grantor may have a qualified interest in a qualified self-settled spendthrift trust
and also have an interest in the same trust that is not a qualified interest, and the rules of section five hundred five of this article shall apply to each interest of the grantor in the same trust other than the grantor’s qualified interest.

(d) “Qualified self-settled spendthrift trust” means a trust if:

1. The trust is irrevocable;
2. The trust is created during the grantor’s lifetime;
3. There is, at all times when distributions could be made to the grantor pursuant to the grantor’s qualified interest, at least one beneficiary other than the grantor:
   (i) To whom income may be distributed, if the grantor’s qualified interest relates to trust income;
   (ii) To whom principal may be distributed, if the grantor’s qualified interest relates to trust principal; or
   (iii) To whom both income and principal may be distributed, if the grantor’s qualified interest relates to both trust income and principal;
4. The trust has at all times at least one qualified trustee, who may be, but need not be, an independent qualified trustee;
5. The trust instrument expressly incorporates the laws of this state to govern the validity, construction and administration of the trust;
6. The trust instrument includes a spendthrift provision, as defined in section five hundred two of this article, that restrains both voluntary and involuntary transfer of the grantor’s qualified interest;
7. The grantor does not have the right to disapprove distributions from the trust; and
(8) The grantor duly executes a qualified affidavit before or substantially contemporaneously with the making of the transfer of the asset or assets into the trust.

(e) “Qualified affidavit” means a duly executed affidavit of the grantor which contains under oath all of the following statements, or statements substantially to the effect:

1. The property being transferred to the trust was not derived from unlawful activities;
2. The grantor has full right, title, and authority to transfer the property to the trust;
3. The grantor will not be rendered insolvent immediately after the transfer of the property to the trust;
4. The grantor does not intend to defraud any creditor by transferring the property to the trust;
5. There are no pending or threatened court actions against the grantor, except for any court action expressly identified in the affidavit or an attachment to the affidavit;
6. The grantor is not involved in any administrative proceeding, except for any proceeding expressly identified in the affidavit or an attachment to the affidavit;
7. The grantor is not indebted on account of an agreement or order of court for the payment of support or alimony in favor of such transferor’s spouse, former spouse or children, or for a division or distribution of property incident to a judicial proceeding with respect to a divorce or annulment in favor of such transferor’s spouse or former spouse, except for any such indebtedness expressly identified in the affidavit or an attachment to the affidavit; and
8. The grantor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code of the United States.
An affidavit is defective and is not a qualified affidavit if it materially fails to meet the requirements set forth in this subsection. An affidavit is not considered defective and is a qualified affidavit if it contains any nonsubstantive variances from the language set forth in this subsection, it contains statements or representations in addition to those required in this subsection which do not materially contradict the required statements or representations or there are any technical errors in the form, substance or method of preparation or execution of the affidavit if those errors were not the fault of the affiant and the affiant reasonably relied upon another person to prepare or notarize the affidavit.

§44D-5-505. Creditor’s claim against grantor.

(a) Whether or not the terms of a trust instrument contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the grantor, the property of a revocable trust is subject to claims of the grantor’s creditors.

(2) During the lifetime of the grantor, with respect to an irrevocable trust, except to the extent otherwise provided in sections five hundred three-a, five hundred three-b and five hundred three-c of this article, a creditor or assignee of the grantor may reach the maximum amount that can be distributed to or for the grantor’s benefit. If a trust has more than one grantor, the amount the creditor or assignee of a particular grantor may reach may not exceed the grantor’s interest in the portion of the trust attributable to that grantor’s contribution.

(3) After the death of a grantor, and subject to the grantor’s right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the grantor’s death is subject to claims of the creditors of the deceased grantor, to the extent the grantor’s probate estate is inadequate to satisfy them, and with such claims payable in order of priority of the following classes:
(A) The costs and expenses of administration of the grantor’s estate;

(B) Reasonable funeral expenses;

(C) Debts and taxes with preference under federal law;

(D) Unpaid child support which is due and owing at the time of the decedent’s death;

(E) Debts and taxes with preference under other laws of the State of West Virginia;

(F) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(G) All other claims.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the grantor of a revocable trust to the extent of the property subject to the power; and

(2) Upon the lapse, release or waiver of the power, the holder is treated as the grantor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section 2041(b)(2), Section 2503(b) or Section 2514(e) of the Internal Revenue Code.

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) (1) An interested person may commence a judicial proceeding to contest the validity of a trust that was revocable at the grantor’s death within the earlier of:

(A) Two years after the grantor’s death; or
(B) Six months after the trustee has sent the interested person a copy of the trust instrument and a notice informing the interested person of the trust’s existence, of the trustee’s name and address, and of the time allowed for commencing a proceeding.

(2) Notwithstanding subdivision (1) of this subsection:

(A) If the interested person is under the age of eighteen years or is a convict or mentally incapacitated person, the interested person has one year after he or she becomes of age or the disability ceases, to commence a judicial proceeding; and

(B) If the interested person resided out of the state at the time the interested person received the trust instrument and notice, the interested person has one year after receipt thereof to commence the judicial proceeding.

(b) Upon the death of the grantor of a trust that was revocable at the grantor’s death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust instrument. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(c) A beneficiary of a trust that was revocable at the grantor’s death that is determined to have been invalid is liable to return any distribution received.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§44D-8-813. Duty to inform and report.

(a) A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and
of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall within a reasonable time respond to a beneficiary’s request for information related to the administration of the trust.

(b) A trustee:

(1) Upon request of a beneficiary, shall within a reasonable time furnish to the beneficiary a copy of the trust instrument;

(2) Within a reasonable time after accepting a trusteeship, shall notify the current beneficiaries of the acceptance and of the trustee’s name, address and telephone number;

(3) Within a reasonable time after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the grantor or otherwise, shall notify the current beneficiaries of the trust’s existence, of the identity of the grantor or grantors, of the right to request a copy of the trust instrument, and of the right to a trustee’s report as provided in subsection (c) of this section; and

(4) Shall notify the current beneficiaries within a reasonable time in advance of any change in the method or rate of the trustee’s compensation.

(c) A trustee shall send to the current beneficiaries of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee’s compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the current beneficiaries, and to other nonqualified or qualified
beneficiaries who request it or who have previously requested it, by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated individual who was a trustee, and the personal representative, conservator or guardian shall deliver to the successor trustee or trustees any books, records, documentation, instruments of title, or assets of or concerning the trust which are in the possession or under the control of the personal representative, conservator or guardian.

(d) A beneficiary may waive the right to a trustee’s report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) The trustee may provide reports or other information to beneficiaries to whom reports and other information are not otherwise required to be furnished under this section.

(f) Subdivisions (2) and (3), subsection (b) of this section do not apply to a trustee who accepts a trusteeship before the effective date of this chapter, to an irrevocable trust created before the effective date of this chapter, or to a revocable trust that becomes irrevocable before the effective date of this chapter.

§44D-8-817. Distribution upon termination.

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within sixty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.
(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall have and exercise all powers appropriate to wind up the administration of the trust and shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) It was induced by improper conduct of the trustee; or

(2) The beneficiary, at the time of the release, did not know of the beneficiary’s rights or of the material facts 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.

A person appointed by a will executor thereof shall not have the powers of executor until he or she qualifies as such by taking an oath and giving bond, unless not required to post bond by section eight of this article, before the county commission in which the will, or an authenticated copy thereof, is admitted to record, or before the clerk thereof in vacation, except that he or she may provide for the burial of the testator, pay reasonable funeral expenses and preserve the estate from waste.

§44-1-6. Bond and oath; termination of grant in certain cases.

At the time of the grant of administration upon the estate of any intestate, the person to whom it is granted shall, in the county commission or before the clerk granting it, give bond, unless not required to post bond by section eight of
this article, and take an oath that the deceased has left no will so far as he or she knows, and that he or she will faithfully perform the duties of the office to the best of his or her judgment. If a will of the deceased be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person theretofore appointed, in like manner as if the former grant had not been made, and such former grant shall thereupon cease.

§44-1-7. Penalty of bond.

(a) Every bond required to be given by an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and where there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value both of such personal estate and of such real estate, or of such personal estate and of such rents and profits, as the case may be.

(b) If on the filing of the appraisement of the estate it shall appear that the penalty of the bond does not comply as to amount with the foregoing requirements, the county commission in which, or the clerk before whom, such bond was given, shall immediately notify such executor or administrator of such fact and require of him or her a new or additional bond, and the failure of such executor or administrator to give the same within a reasonable time shall be sufficient cause for his or her removal.

§44-1-8. When executor or administrator not to give bond; when surety not required.

(a) Subject to the provisions of section three, article five of this chapter governing the appointment of a nonresident
of this state as an executor, where the will directs that an
executor shall not give bond, it shall not be required of him
or her, unless at the time the will is admitted to probate or
at any time subsequently, on the application of any person
interested, and after a hearing, it is required by the county
commission that bond ought to be given.

(b) No surety shall be required on the bond of the
executor if he or she is also the sole beneficiary of the
decedent, unless the will directs otherwise, and no surety
shall be required on the bond of the administrator if he or
she is the sole distributee of the decedent, unless at the time
the will is admitted to probate or the administrator is
appointed or at any time thereafter, on the application of any
person interested, and after a hearing, it is required by the
county commission that surety ought to be given.

c) In all such cases where no surety is required of the
executor or administrator, the executor or administrator
shall nevertheless be liable upon his or her bond upon his or
her own personal recognizance in the event of default,
failure or misadministration by the executor or
administrator.

§44-1-14a. Notice of administration of estate; time limits for
filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisement
of any estate or within one hundred twenty days of the date
of qualification of the personal representative if an
appraisement is not filed as required in section fourteen of
this article, the clerk of the county commission shall
publish, once a week for two successive weeks, in a
newspaper of general circulation within the county of the
administration of the estate, a notice, which is to include:

(1) The name of the decedent;

(2) The name and address of the county commission
before whom the proceedings are pending;
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(3) The name and address of the personal representative;

(4) The name and address of any attorney representing the personal representative;

(5) The name and address of the fiduciary commissioner, if any;

(6) The date of first publication;

(7) A statement that claims against the estate must be filed within sixty days of the date of first publication in accordance with article two or article three-a of this chapter;

(8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with section eleven, twelve or thirteen, article five, chapter forty-one of this code;

(9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within sixty days after the date of first publication or thirty days of service of the notice, whichever is later; and

(10) If the appraisement of the assets of the estate shows the value to be $200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: “Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within sixty days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner”. If a party in interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and
the personal representative shall be required to pay no
further fees, except to the fiduciary commissioner for
conducting any hearings, or performing any other duty as a
fiduciary commissioner. The time period for filing claims
against the estate shall expire upon the time period set out
in the notice to creditors published by the clerk of the county
commission as required in this subsection (a). If an unpaid
creditor files a claim, the fiduciary commissioner shall
conduct a hearing on the claim filed by the creditor,
otherwise, the fiduciary commissioner shall conclude the
administration of the estate as requested by the interested
party.

(11) This notice shall be published as a Class II legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code. The publication of
such notice shall be equivalent to personal service on
creditors, distributees and legatees.

(b) If no appraisement is filed within the time period
established pursuant to section fourteen of this article, the
county clerk shall send a notice to the personal
representative by first class mail, postage prepaid,
indicating that the appraisement has not been filed.

(c) The personal representative shall promptly make a
diligent search to determine the names and addresses of
creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within sixty days
after the date of first publication, serve a copy of the notice,
published pursuant to subsection (a) of this section, by first
class mail, postage prepaid or by personal service on the
following persons:

(1) If the personal representative is not the decedent’s
surviving spouse and not the sole beneficiary or sole heir,
the decedent’s surviving spouse, if any;
(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within sixty days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of $20 for the publication of the notice required in this section.

(h) For purposes of this section, the term “beneficiary” means a person designated in a will to receive real or personal property.

Where an execution on a judgment or decree against a personal representative is returned without being satisfied, there may be forthwith brought and prosecuted an action against the surety in any bond given by such personal 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.

(a) There is hereby created within the county commission an office, designated the fiduciary supervisor, who shall be appointed by order of the commission and whose office, with the consent of the clerk of the county commission, shall be housed within the office of such clerk or shall be housed in such other office as the commission may designate. Such fiduciary supervisor shall at the local option of each such commission, be either a part-time or full-time employee as may be required by the county commission and shall receive such salary as may be fixed by order of the county commission.

(b) The fiduciary supervisor shall have general supervision of all fiduciary matters and of the fiduciaries or personal representatives thereof and of all fiduciary commissioners and of all matters referred to such commissioners and shall make all ex parte settlements of the accounts of such fiduciaries except as to those matters referred to fiduciary commissioners for settlement.

(c) The county commission shall determine that the person to be appointed as fiduciary supervisor is fully qualified by education or experience, or both, to perform the duties assigned to such office by this chapter or other provisions of this code. Such person shall have the requisite knowledge of the legal issues raised and problems presented.
by any of the proceedings had and documents filed pursuant to the chapter, the procedures required with respect thereto, the rights of all parties and interested persons with respect to such procedures and the duties to be performed in examining and approving the several and various papers and documents presented to the fiduciary supervisor. The State Auditor shall design and supervise a test to be given to all persons selected or appointed as fiduciary supervisor who are not licensed to practice law in this state, if any, which test shall include such matters as the Tax Commissioner deems appropriate to determine the proficiency, experience, knowledge and skill to perform all of the duties imposed upon or to be imposed upon fiduciary supervisors generally. Such test shall be administered under the authority of the State Auditor by such person or persons as he or she may designate either at the county wherein the fiduciary supervisor is to serve or at such other place as the State Auditor may designate. The results of the test given to any person or persons shall be kept confidential except as to those persons who have completed the same to the satisfaction of the State Auditor and except as to those persons who may desire their individual test results to be made public. The State Auditor shall at least annually conduct a training program for fiduciary supervisors who are not licensed to practice law in this state. The training program shall be conducted at such times and places and consist of such subjects as the State Auditor may determine. All fiduciary supervisors who are not licensed to practice law shall be required to attend such training programs and those supervisors as are so licensed may attend.

(d) The fiduciary supervisor shall give bond with good security to be approved by the county commission in an amount equal to the amount posted by the clerk of the county commission in the county wherein such fiduciary supervisor is to serve.

(e) Neither the fiduciary supervisor nor any person to whom the duties of fiduciary supervisor have been
delegated, in whole or in part (excluding fiduciary commissioners) shall engage in the practice of law, for compensation or otherwise, with respect to the administration of any estate or trust wherein the fiduciary thereof has qualified in his or her county or with respect to any proceedings before him or her or which are or may be referred to a fiduciary commissioner in his or her county. Nor shall a fiduciary commissioner or special fiduciary commissioner engage in the practice of law with respect to matters referred to him or her as such commissioner. Any fiduciary supervisor or person to whom any of the functions or duties of the fiduciary supervisor have been delegated or fiduciary commissioner or special fiduciary commissioner who so engages in the practice of law contrary to the limited prohibitions of this section, shall be removed from his or her office or employment and, in addition thereto, shall be guilty of a misdemeanor and, upon conviction thereof, shall 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.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state, nor any banking institution which does not maintain a main office or branch office within this state nor any corporation having its principal office or place of business outside this state, may be appointed or act as executor, administrator, curator, testamentary guardian, guardian or conservator in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent’s assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent’s state of domicile and submits letters of probate authenticated by the probate authorities of the decedent’s
state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(2) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent’s assets situate in this state if such nonresident individual is acting as administrator in said decedent’s state of domicile and submits letters of administration authenticated by the probate authorities of the decedent’s state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(3) An individual who is a nonresident of this state may be appointed and act as testamentary guardian of a nonresident infant and thereby exercise dominion and control over such nonresident infant’s assets situate in this state upon submission of authenticated documentation that such nonresident testamentary guardian was so appointed at the place of domicile of the nonresident infant. Such authenticated documentation shall be submitted to the clerk of the county commission of any county of this state wherein assets belonging to such nonresident infant are situate;

(4) An individual who is a nonresident of this state and who is named executor by a resident decedent may qualify and act as executor in this state;

(5) An individual who is a nonresident of this state may be appointed and act as administrator of a resident decedent’s assets in this state if appointed in accordance with the provisions of section four, article one of this chapter;

(6) An individual who is a nonresident of this state may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article ten of this chapter; and
(7) An individual who is a nonresident of this state may be appointed as guardian or conservator of a resident incompetent: Provided, That such appointment is made in accordance with the provisions of article two, chapter forty-four-a of this code and if such nonresident individual may otherwise qualify as guardian or conservator.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendent or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of sections seven or eight, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent’s will directs that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6), subsection (a) of this section named in a decedent’s will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian, guardian or conservator pursuant to the provisions of subsection (a) of
this section, said individual thereby constitutes the clerk of
the county commission wherein such appointment was
made as his or her true and lawful attorney-in-fact upon
whom may be served all notices and process in any action
or proceeding against him or her as executor, administrator,
testamentary guardian, guardian or conservator or with
respect to such estate, and such qualification shall be a
manifestation of said nonresident individual’s agreement
that any notice or process, which is served in the manner
hereinafter provided in this subsection, shall be of the same
legal force and validity as though such nonresident was
personally served with notice and process within this state.
Service shall be made by leaving the original and two copies
of any notice or process together with a fee of $5 with the
clerk of such county commission. The fee of $5 shall be
deposited with the county treasurer. Such clerk shall
thereupon endorse upon one copy thereof the day and hour
of service and shall file such copy in his or her office and
such service shall constitute personal service upon such
nonresident: Provided, That the other copy of such notice or
process shall be forthwith sent by registered or certified
mail, return receipt requested, deliver to addressee only, by
said clerk or to such nonresident at the address last furnished
by him or her to said clerk and either: (1) Such nonresident’s
return receipt signed by him or her; or (2) the registered or
certified mail bearing thereon the stamp of the post office
department showing that delivery therefore was refused by
such nonresident is appended to the original notice or
process filed therewith in the office of the clerk of the
county commission from which such notice or process was
issued. No notice or process may be served on such clerk of
the county commission or accepted by him or her less than
thirty days before the return date thereof. The clerk of such
county commission shall keep a record in his or her office
of all such notices and processes and the day and hour of
service thereof. The provision for service of notice or
process herein provided is cumulative and nothing herein
contained shall be construed as bar to service by publication
where proper or the service of notice or process in any other
lawful mode or manner.

(d) The personal estate of a resident decedent, infant or
incompetent may not be removed from this state until the
inventory or appraisement of that resident decedent’s, infant’s
or incompetent’s assets have been filed and any new or
additional bond required to satisfy the penalty specified in
subsection (b) of this section has been furnished. The liability
of a nonresident executor, administrator, testamentary
guardian, guardian or conservator and of any such surety shall
be joint and several and a civil action on any such bond may
be instituted and maintained against the surety,
notwithstanding any other provision of this code to the
contrary, even though no civil action has been instituted
against such nonresident.

(e) Any such nonresident who removes from this state
assets administered in and situate in this state without
complying with the provisions of this section, the provisions
of article eleven of this chapter or any other requirement
pertaining to fiduciaries generally, shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not more than $1,000 or confined in the county jail for not
more than one year, or, in the discretion of the court, by both
such fine and confinement.

(f) If a nonresident appointed pursuant to subsection (a)
of this section fails or refuses to file an accounting required
by this chapter, and the failure continues for two months
after the due date, he or she may, upon notice and hearing,
be removed or subjected to any other appropriate order by
the county commission, and if his or her failure or refusal to
account continues for six months, he or she shall be
removed by the county commission.
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 Governor with the advice and consent of the Senate.

4 (b) No person may be appointed to the commission or continue to serve as a member of the commission who:
(1) Holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions;

(2) Is a candidate for any political office;

(3) Is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission; or

(4) Holds any political party office or participates in a campaign relating to a referendum or other ballot issue: Provided, That a member may contribute to a political campaign.

(c) Commencing July 1, 2014, the Ethics Commission shall consist of the following nine members, appointed with staggered terms:

(1) One member who served as a member of the West Virginia Legislature;

(2) One member who served as an elected or appointed county official;

(3) One member who served as an elected or appointed municipal official;

(4) One member who served as an elected county school board member;

(5) One member from a rural area; and

(6) Four citizen members.

(d) Any Commission member in office on June 30, 2014, who meets one of the categories for membership set out in subsection (c) of this section, may be reappointed. No more than five members of the Commission shall be of the same political party and no more than two members shall be from the same state senatorial district.
(e) After the initial staggered terms, the term of office for a Commission member is five years. No member shall serve more than two consecutive full or partial terms. No person may be reappointed to the commission until at least two years have elapsed after the completion of the second consecutive term. A member may continue to serve until a successor has been appointed and qualified.

(f) All appointments shall be made by the Governor in a timely manner so as not to create a vacancy for longer than sixty days.

(g) Each member must be a resident of this state during the appointment term.

(h) Five members of the commission constitutes a quorum.

(i) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.

(j) A member may be removed by the Governor for substantial neglect of duty, gross misconduct in office or a violation of this chapter, after written notice and opportunity for reply.

(k) The commission, as appointed on July 1, 2014, shall meet before August 1, 2014, at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting until a chairperson is elected. At the first meeting, the commission shall elect a chairperson and any other officers as are necessary. The commission shall within ninety days after the first meeting adopt rules for its procedures. The commission may use the rules in place on July 1, 2014, until those rules are amended or revoked.

(l) Members of the commission shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as
recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties: Provided, That to be eligible for compensation and expense reimbursement, the member must participate in a meeting or adjudicatory session: Provided, however, That the member is not eligible for expense reimbursement if he or she does not attend a meeting or adjudicatory session in person.

(m) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance with commission rules and with applicable law. The executive director shall be paid a salary fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence appropriate civil actions: Provided, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(n) The commission may delegate authority to the chairperson or the executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairperson or the executive director.

(o) The principal office of the commission shall be in the seat of government, but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless:

(1) They are required to be private by the provisions of this chapter relating to confidentiality; or
(2) They involve discussions of commission personnel, planned or ongoing litigation, and planned or ongoing investigations.

(p) Meetings of the commission shall be upon the call of the chairperson and may be conducted by telephonic or other electronic conferencing means: Provided, That when the commission is acting as a hearing board under this article, or when the Probable Cause Review Board meets to receive an oral response as authorized by this article, members may not participate or vote by telephonic means: Provided, however, That participation and voting may be permitted if the member attends and participates via video conferencing that allows the witness and the member to observe and communicate with one another. Members shall be given notice of meetings held by telephone or other electronic conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the commission in accordance with its record retention policy.

§6B-2-2. Same – General powers and duties.

(a) The commission shall propose rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, to carry out the purposes of this article.

(b) The commission may initiate or receive complaints and make investigations, as provided in section four of this article, and upon complaint by an individual of an alleged violation of this chapter by a public official or public employee, refer the complaint to the Review Board as provided in section two-a of this article. Any person charged with a violation of this chapter is entitled to the administrative hearing process contained in section four of this article.
(c) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the commission’s duties or exercise of its powers, including its duties and powers of investigation.

(d) The commission shall, in addition to its other duties:

(1) Prescribe forms for reports, statements, notices and other documents required by law;

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

(3) Provide assistance to agencies, officials and employees in administering the provisions of this act.

(e) The commission may:

(1) Prepare reports and studies to advance the purpose of the law;

(2) Contract for any services which cannot satisfactorily be performed by its employees;

(3) Require the Attorney General to provide legal advice without charge to the commission;

(4) Employ additional legal counsel;

(5) Request appropriate agencies of state to provide any professional assistance the commission may require in the discharge of its duties: Provided, That the commission shall reimburse any agency other than the Attorney General the cost of providing assistance; and

(6) Share otherwise confidential documents, materials or information with appropriate agencies of state.
government, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.


(a) There is hereby established a Probable Cause Review Board that shall conduct investigations to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred. The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint three persons as members of the Review Board, each of whom shall be a resident and citizen of the state. Each member of the Review Board shall hold office until his or her successor has been appointed and qualified. At least one member of the board must be an attorney licensed by the State of West Virginia and no more than two members can belong to the same political party. The members of the Review Board shall be appointed for overlapping terms of two years, except that the original appointments shall be for terms of one, two and three years, respectively. Any member whose term expires may be reappointed by the Governor. In the event a Review Board member is unable to complete his or her term, the Governor shall appoint a person with similar qualifications to complete that term. Each Review Board member shall receive the same compensation and expense reimbursement as provided to Ethics Commission members pursuant to section one of this article. These and all other costs incurred by the Review Board shall be paid from the budget of the Ethics Commission.
(c) No person may be appointed to the Review Board or continue to serve as a member of the Review Board who holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any of such offices, or who is a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the Review Board. A Review Board member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(d) Members of the Review Board may recuse themselves from a particular case upon their own motion, with the approval of the Review Board, and shall recuse themselves, for good cause shown, upon motion of a party. The remaining members of the Review Board may, by majority vote, select a temporary member to replace a recused member: Provided, That the temporary member selected to replace a recused member shall be a person who meets all requirements for appointment provided by subsection (c), section two-a of this article, and whose political affiliation is the same as the recused member.

(e) The Ethics Commission shall propose, for approval by the Review Board, any procedural and interpretative rules governing the operation of the Review Board. The commission shall propose these rules pursuant to article three, chapter twenty-nine-a of the code.

(f) The Ethics Commission shall provide staffing and a location for the Review Board to conduct hearings. The Ethics Commission is authorized to employ and assign the necessary professional and clerical staff to assist the Review Board in the performance of its duties and commission staff shall, as the commission deems appropriate, also serve as staff to the Review Board. All investigations and proceedings of the Review Board are deemed confidential as provided in section four of this article and members of...
the Review Board are bound to the same confidentiality requirements applicable to the Ethics Commission pursuant to this article.

(g) The Review Board may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Review Board’s duties.

(h) Upon decision by the Review Board that probable cause exists to believe that a violation of this chapter has occurred, commission staff shall send notice to the commission members of the Review Board’s finding. After an ethics complaint has been submitted to the Review Board in accordance with section four of this article, the commission may take no further action until it receives the Review Board’s probable cause finding.

§6B-2-3a. Complaints.

(a) The commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.

(b) The commission may order the executive director to prepare a complaint, upon a majority affirmative vote of its members, if it receives or discovers credible information which, if true, would merit an inquiry into whether a violation of this chapter has occurred.

(c) (1) No complaint may be accepted or initiated by the commission against a public official or public employee during the sixty days before a primary or general election at which the public official or public employees is a candidate for elective office.

(2) If a complaint is pending against a public official or public employee who is also a candidate for public office, then the commission shall stay the processing of the
complaint for the sixty-day time period preceding the primary election or general election, or both, unless the candidate waives the stay in writing. If the commission receives a written waiver of the stay at least sixty days prior to the election, and if the Review Board has not yet ruled whether probable cause exists to believe there has been a violation of the Ethics Act, then the Review Board will process the complaint and make a probable cause determination at least thirty days prior to the election:

Provided, That, the stay provisions of this subdivision do not apply to complaints which have already been adjudicated by the commission and are pending on appeal.

(3) For purposes of this subsection, any provisions of this chapter setting time periods for initiating a complaint or for performing any other action are considered tolled until after the election at which the public official or public employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the commission or the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official capacity may file a complaint for a violation of this chapter with the commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the commission under this section. Within fourteen days after the receipt of a complaint, the executive director shall refer the complaint to the Review Board created pursuant to section two-a of this article.
(b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.

(c) Upon a finding by the Review Board that the complaint is sufficient, the executive director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked “Addressee only, personal and confidential”. The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review Board and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the forty-five day period following the mailing of a notice of investigation, the Review Board shall proceed to consider: (1) The allegations raised in the complaint; (2) any timely received written response of the respondent; and (3) any other competent evidence gathered by or submitted to the Review Board which has a proper bearing on the issue of probable cause. A respondent may
appear before the Review Board and make an oral response
to the complaint. The commission shall promulgate rules
prescribing the manner in which a respondent may present
his or her oral response. The commission and Review Board
may ask a respondent to disclose specific amounts received
from a source and request other detailed information not
otherwise required to be set forth in a statement or report
filed under the provisions of this chapter if the information
sought is considered to be probative as to the issues raised
by a complaint or an investigation initiated by the
commission. Any information thus received shall be
confidential except as provided by subsection (f) of this
section. If a person asked to provide information fails or
refuses to furnish the information to the commission or
Review Board, the commission or Review Board may
exercise their subpoena power as provided in this chapter
and any subpoena issued by the commission or Review
Board shall have the same force and effect as a subpoena
issued by a circuit court of this state. Enforcement of any
subpoena may be had upon application to a circuit court of
the county in which the Review Board is conducting an
investigation through the issuance of a rule or an attachment
against the respondent as in cases of contempt.

(e) Unless consented to by both the respondent and
complainant, or unless the commission makes a good cause
determination in writing the investigation and a
determination as to probable cause shall not exceed eighteen
months.

(f) (1) All investigations, complaints, reports, records,
proceedings and other information received by the
commission or Review Board and related to complaints
made to the commission or investigations conducted by the
commission or Review Board pursuant to this section,
including the identity of the complainant or respondent, are
confidential and may not be knowingly and improperly
disclosed by any current or former member or employee of
the commission or the Review Board except as follows:
(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the commission with a copy of the Review Board’s order and the statement of charges prepared pursuant to the provisions of subsection (h) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.

(B) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at the hearing, as well as the commission’s orders, are not confidential.

(C) The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent’s request.

(E) Where the commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(2) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission shall order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or
criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the commission.

(g) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an order directing the commission staff to prepare a statement of charges and assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct. The commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The commission’s review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent’s agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(h) At least eighty days prior to the date of the hearing, the commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the commission, by legislative rule, directs.

(i) The commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing
examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(j) A member of the commission or a hearing examiner presiding at a hearing may:

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission consistent with the provisions of this chapter.

(k) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the
presiding officer shall order a transcript, verified by oath or
affirmation, of each hearing held and so recorded. In the
discretion of the commission, a record of the proceedings
may be made by a certified court reporter. Unless otherwise
ordered by the commission, the cost of preparing a
transcript shall be paid by the party requesting the transcript.
Upon a showing of indigency, the commission may provide
a transcript without charge. Within fifteen days following
the hearing, either party may submit to the hearing examiner
that party’s proposed findings of fact. The hearing examiner
shall thereafter prepare his or her own proposed findings of
fact and make copies of the findings available to the parties.
The hearing examiner shall then submit the entire record to
the commission for final decision.

(l) The recording of the hearing or the transcript of
testimony, as the case may be, and the exhibits, together
with all papers and requests filed in the proceeding, and the
proposed findings of fact of the hearing examiner and the
parties, constitute the exclusive record for decision by the
commission, unless by leave of the commission a party is
permitted to submit additional documentary evidence or
take and file depositions or otherwise exercise discovery.

(m) The commission shall set a time and place for the
hearing of arguments by the complainant and respondent, or
their respective representatives, and shall notify the parties
thereof. Briefs may be filed by the parties in accordance
with procedural rules promulgated by the commission. The
commission shall issue a final decision in writing within
forty-five days of the receipt of the entire record of a hearing
held before a hearing examiner or, in the case of an
evidentiary hearing held by the commission acting as a
hearing board in lieu of a hearing examiner, within twenty-
one days following the close of the evidence.

(n) A decision on the truth or falsity of the charges
against the respondent and a decision to impose sanctions
must be approved by at least six members of the
commission.
(o) Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a party. The remaining members of the commission may, by majority vote, select a temporary member to replace a recused member: Provided, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection (c), section one of this article, as the recused member.

(p) Except for statements made in the course of official duties to explain commission procedures, no member or employee or former member or employee of the commission may make any public or nonpublic comment about any proceeding previously or currently before the commission. Any member or employee or former member or employee of the commission who violates this subsection is subject to the penalties contained in subsection (d), section ten of this article. In addition, violation of this subsection by a current member or employee of the commission is grounds for immediate removal from office or termination of employment.

(q) A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

(r) No employee of the commission assigned to prosecute a complaint may participate in the commission deliberations or communicate with commission members or the public concerning the merits of a complaint.

(s) (1) If the commission finds by clear and convincing evidence that the facts alleged in the complaint are true and constitute a material violation of this chapter, it may impose one or more of the following sanctions:

(A) Public reprimand;
(B) Cease and desist orders;

(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed $5,000 per violation; or

(E) Reimbursement to the commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall be collected by the commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(t) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(u) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, only by the respondent and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.
(v) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the commission for the actual costs of its investigation. In addition, the commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.

(w) (1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the commission that there is credible information or evidence that the respondent may have committed a criminal violation, the matter shall be referred to the full commission for its consideration. If, by a vote of two-thirds
of the members of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, the commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two-thirds of the full commission determine that a criminal violation has occurred, the commission shall remand the matter to the Review Board, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(x) The provisions of this section shall apply to violations of this chapter occurring after September 30, 1989, and within one year before the filing of a complaint: Provided, That the applicable statute of limitations for violations which occur on or after July 1, 2005, is two years after the date on which the alleged violation occurred: Provided, however, That the applicable statute of limitations for violations which occur on or after July 1, 2016, is five years after the date on which the alleged violation occurred.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section. — The provisions of this section apply to all elected and appointed public officials
and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: Provided, That the official’s or employee’s participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to
their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person’s employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: Provided, That as used in this subdivision, “employment or working conditions” shall only apply to government employment: Provided, however, That government employment includes only those governmental entities specified in subsection (a) of this section.

c (Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit
conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;
(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official’s public position or duties;

(C) The fee is for services provided by the public official that are related to the public official’s regular, nonpublic trade, profession, occupation, hobby or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.
(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the legislature’s participation and which assist this and other state legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence and integrity of legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(C) Representing the states and their Legislatures in the American federal system of government;

(D) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between state legislatures in the United States and Legislatures in other countries.
The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, and with the Secretary of State and are available for public review.”

(7) Upon written notice to the commission, any member of the board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the
Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code and with the commission, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the board of Public Works shall contain the following disclaimer: “This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review.” Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(d) Interests in public contracts. —

In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review
or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed $1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than $5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics
Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information. — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation. — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client’s interests are materially adverse to the interests of the government agency, without the consent of the government agency: Provided, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.
(g) Limitation on practice before a board, agency, commission or department. — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.
(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person’s education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons and vendors. —

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.
(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and “subordinate” includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an
exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) Members of the Legislature required to vote. — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules
of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) Limitations on voting. —

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past twelve months: Provided, That this limitation only applies if the total amount of the loan or loans exceeds $15,000.

(C) The employment or working conditions of the public official’s relative or person with whom the public official resides.

(D) The appropriations of public moneys or the awarding of a 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: Provided, That if the public official or immediate
family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit: Provided, however, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official’s, or his or her immediate family member’s, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.

(2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than $10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official’s recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or
herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

(k) Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than $1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency’s proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(l) Certain compensation prohibited. — (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:
(A) The public employee’s compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee’s compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education
and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee’s department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.
§6B-2-6. Financial disclosure statement; filing requirements.

(a) The financial disclosure statement shall be filed on February 1 of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the Ethics Commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the Governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivision (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing date, shall file a financial disclosure statement for the previous twelve months no later than thirty days after the date on which the person assumes the duties of the office, unless the person has filed a financial disclosure statement with the commission during the twelve-month period before he or she assumed office.

(b) A candidate for public office shall file a financial disclosure statement for the previous calendar year with the state Ethics Commission no later than ten days after he or
she files a certificate of announcement, unless he or she has
previously filed a financial disclosure statement with the
state Ethics Commission for the previous calendar year.

The Ethics Commission shall file a duplicate copy of the
financial disclosure statement required in this section in the
following offices within ten days of the receipt of the
candidate’s statement of disclosure:

(1) Municipal candidates in municipalities which have
opted, by ordinance, to be covered by the disclosure
provisions of this section, in the office of the clerk of the
municipality in which the candidate is seeking office;

(2) Legislative candidates in single county districts and
candidates for a county office or county school board in the
office of the clerk of the county commission of the county
in which the candidate is seeking office;

(3) Legislative candidates from multi-county districts
and congressional candidates in the office of the clerk of the
county commission of the county of the candidate’s
residence.

After a ninety-day period following any election, the
clerks who receive the financial disclosure statements of
candidates may destroy or dispose of those statements filed
by candidates who were unsuccessful in the election.

(c) No candidate for public office may maintain his or
her place on a ballot and no public official may take the oath
of office or enter or continue upon his or her duties or
receive compensation from public funds unless he or she has
filed a financial disclosure statement with the state Ethics
Commission as required by the provisions of this section.

(d) The Ethics Commission may, upon request of any
person required to file a financial disclosure statement, and
for good cause shown, extend the deadline for filing such
statement for a reasonable period of time: Provided, That no
extension of time shall be granted to a candidate who has
not filed a financial disclosure statement for the preceding filing period.

(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.

(g) The Ethics Commission shall publish either on the Internet or by printed document made available to the public, a list of all persons who have violated any Ethics Commission’s financial disclosure statement filing deadline.

(h) The Ethics Commission shall, in addition to making all financial disclosure statements available for inspection upon request:

(1) Publish on the internet all financial disclosure statements filed by members of the Legislature and candidates for legislative office, elected members of the executive department and candidates for the offices that constitute the executive department, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those reports filed on or after January 1, 2012; and

(2) Publish on the internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as the commission determines resources are available to permit the Ethics Commission to make such publication on the internet. The commission shall redact financial disclosure statements published on the internet to exclude from publication personal information such as signatures, home addresses and mobile and home telephone numbers.

§6B-2-10. Violations and penalties.

(a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this article or violates the provisions of subdivision (1), subsection (f),
section four of this article is guilty of a misdemeanor and, upon conviction, shall be confined in jail for a period not to exceed six months or shall be fined not more than $1,000, or both. A member or employee of the commission or the Review Board convicted of violating said subdivision is subject to immediate removal from office or discharge from employment.

(b) Any person who violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement or knowingly and willfully concealing a material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail not more than one year, or both.

(c) Any person who knowingly fails or refuses to file a financial statement required by section six of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 nor more than $1,000.

(d) If any commission member or staff knowingly violates subsection (p), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and, shall be fined not less than $100 nor more than $1,000.

(e) Any person who violates the provisions of subdivision (2), subsection (f), section four of this article by knowingly and willfully disclosing any information made confidential by an order of the commission is subject to administrative sanction by the commission as provided in subsection (s) of said section.

(f) Any person who knowingly gives false or misleading material information to the commission or who induces or procures another person to give false or misleading material information to the commission is subject to administrative sanction by the commission as provided in subsection (s), section four of this article.

CHAPTER 6D. PUBLIC CONTRACTS.
ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.

§6D-1-1. Definitions.

For purposes of this article:

(a) “Applicable contract” means a contract of a state agency that has an actual or estimated value of at least $100,000: Provided, That this shall include a series of related contracts or orders in which the cumulative total exceeds $100,000.

(b) “Business entity” means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

(c) “Disclosure” shall mean a form prescribed and approved by the Ethics Commission pursuant to section three of this article.

(d) “Interested party” or “Interested parties” means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

(e) “State agency” means a board, commission, office, department, or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, That for
purposes of this article, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of this article.

§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.

(a) A state agency may not enter into an applicable contract that has been awarded to a business entity unless and until the business entity submits to the state agency a disclosure of interested parties to the applicable contract.

(b) The business entity shall submit the disclosure to the state agency no later than when the contract is submitted to the state agency for signature and approval by the state agency: Provided, That this provision does not require submission of a disclosure pursuant to this article as part of a bid for the contract.

(c) Within thirty days following the completion or termination of the applicable contract, the business entity shall submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract.

§6D-1-3. Filing with Ethics Commission.

(a) The disclosure of interested parties must be submitted on a form prescribed and approved by the Ethics Commission that includes:

(1) A list of each interested party to the contract that is known or reasonably anticipated by the contracting business entity; and

(2) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

(b) Not later than the fifteenth day after the date the state agency receives an initial or supplemental disclosure of
interested parties required under this section, the state agency shall submit a copy of the disclosure to the Ethics Commission.

(c) The Ethics Commission shall make copies of the disclosures received from state agencies publicly available. To the extent possible under existing technology or upon obtaining sufficient technology, the Ethics Commission shall post copies of the disclosures on the commission’s website.


(a) The provisions of section two and three of this article do not apply to applicable contracts of a state institution of higher education, as defined in section two, article one, chapter eighteen-b, if the state institution of higher education complies with the requirements of this section and has a policy in place that provides as follows:

(1) For business entities that are not registered to do business with the State of West Virginia, at the time of registration of a business entity seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contracts are executed;

(2) For business entities that are already registered to do business with the State of West Virginia, and a business entity is seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contract is executed;

(3) Business entities are required to update any changes to the list of interested parties of the business entity on a periodic basis; and
(4) The disclosures required by this section are made in writing, by an authorized agent under oath and under penalty of perjury.

(b) The state institution of higher education shall provide a report to the ethics commission on or before December 31 of each year listing all business entities that received more than one-hundred thousand dollars from the institution of higher education during the previous fiscal year, with an accompanying list of interested parties provided by each such business entity.

(c) For purposes of this section, the term “interested parties” shall not include any sub-contractors receiving less than $50,000 under an applicable contract.

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.

For the purposes of this article, the following words shall have the meanings hereafter ascribed to them unless the context clearly indicates otherwise:

(a) “Timberland” means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(b) “Managed timberland” means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site and that is managed pursuant to a plan provided for in section ten of this article: Provided, That none of the following may be considered as managed timberland within the meaning of this article:

(1) Any tract or parcel of real estate, regardless of its size, which is part of any subdivision that is approved or exempted from approval pursuant to the provisions of a planning ordinance adopted under the provisions of article twenty-four, chapter eight of this code; or

(2) Any tract or parcel of real estate, regardless of its size, which is subject to a deed restriction, deed covenant or
zoning regulation which limits the use of that real estate in a way that precludes the commercial production and harvesting of timber upon it.

(c) “Tax Commissioner,” “commissioner” or “tax department” means the State Tax Commissioner or a designee of the State Tax Commissioner.

(d) “Valuation commission” or “commission” means the commission created in section three of this article.

(e) “County board of education” or “board” means the duly elected board of education of each county.

(f) “Farm woodlot” means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

(g) “Owner” means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold or is a purchaser of a freehold estate who is in possession before transfer of legal title is also deemed the owner.

(h) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(i) “Paper” means a tax map or document that is not electronic.

The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning on or after January 1, 2001.
§11-1C-4. Commission powers and duties; rulemaking.

(a) On or before October 1, 1990, and thereafter as necessary the Property Valuation Training and Procedures Commission shall perform the following duties:

(1) Devise training and certification criteria for county assessors and their employees and members of county commissions, which shall include a definition of “appropriate staff member” as the term is used in section six of this article relating to required training, which definition shall include deputy assessors as provided for in section three, article two of this chapter;

(2) Establish uniform, statewide procedures and methodologies for the mapping, visitation, identification and collection of information on the different species of property, which procedures and methodologies shall include reasonable requirements for visitation of property, including a requirement that a good faith effort be made to contact any owner of owner-occupied residential property: Provided, That the commission is not authorized to establish the methods to value real and personal property, but shall have the authority to approve such methods;

(3) Develop an outline of items to be included in the county property valuation plan required in section seven of this article, which shall include information to assist the Property Valuation Training and Procedures Commission in its determination of the distribution of state funds provided pursuant to section eight of this article.

(b) On or before July 1, 1991, the commission shall establish objective criteria for the evaluation of the performance of the duties of county assessors and the Tax Commissioner.

(c) In the event the Tax Commissioner and a county assessor cannot agree on the content of the plan required under section seven of this article, the commission shall examine the plan and the objections of the Tax
Commissioner and shall resolve the dispute on or before the
first day of the fiscal year following the fiscal year in which
the plan was submitted to the commission for resolution.

(d) The commission may make such rules as it considers
necessary to carry out the provisions of this section, which
rules shall include procedures for the maintenance and use
of paper and electronic tax maps but specifically excluding
rules that relate to the sale, reproduction and distribution of
the maps and associated data. Any rules adopted by the
commission prior to October 1, 1990, under subsection (a)
of this section are exempt from the provisions of article
three, chapter twenty-nine-a of this code: Provided, That the
commission shall file a copy of any rule so exempted from
the provisions of chapter twenty-nine-a of this code with the
Legislative Rule-Making Review Committee created
pursuant to section eleven, article three of said chapter prior
to November 30, 1990.

(e) The commission may make and enter into all
contracts and agreements necessary or incidental to the
performance of its duties and the execution of its powers
under this article.

(f) In order to fund the costs of the requirements of this
article, the valuation commission may, on a one-time basis,
borrow $5 million and distribute those funds according to
need and the valuation plan submitted by the counties. Upon
request of the valuation commission, the State Board of
Investments shall loan, under commercially reasonable
terms to be determined by the parties, up to $5 million to the
valuation commission, on a one-time basis, from one of the
various funds administered by the State Board of
Investments.

(g) The commission shall be required, if the Tax
Commissioner has failed to do so, to appoint one or more
special assessors if it is the determination of the commission
that an assessor has substantially failed to perform the duties
required by sections seven and eight of this article. A writ
of mandamus shall be the proper remedy if the commission
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.

(a) Except for property appraised by the State Tax
Commissioner under section ten of this article and property
appraised and assessed under article six of this chapter, all
assessors shall, within three years of the approval of the
county valuation plan required pursuant to this section,
appraise all real and personal property in their jurisdiction
at fair market value except for special valuation provided
for farmland and managed timberland. They shall utilize the
procedures and methodologies established by the Property
Valuation Training and Procedures Commission and the
valuation system established by the Tax Commissioner.

(b) In determining the fair market value of the property
in their jurisdictions, assessors may use as an aid to
valuation any information available on the character and
values of such property, including, but not limited to, the
updated information found on any statewide electronic data
processing system network established pursuant to section
twenty-one, article one-a of this chapter. Valuations may
not be based exclusively on the statewide electronic data
processing system network and usage of the information on
the files as an aid to proper valuation does not constitute an
implementation of the statewide mass reappraisal of
property.

(c) Before beginning the valuation process, each
assessor shall develop a county valuation plan for using
information currently available, for checking its accuracy
and for correcting any errors found. The plan must be
submitted to the Tax Commissioner on or before December
1, 1990, for review and approval and the plan must be
revised as necessary and resubmitted every three years
thereafter. Whenever a plan is submitted to the Tax
Commissioner, a copy shall also be submitted to the county commission of that county and the Property Valuation Training and Procedures Commission and that county commission and the Property Valuation Training and Procedures Commission may forward comments to the Tax Commissioner. The Tax Commissioner shall respond to any plan submitted or resubmitted within sixty days of its receipt. The valuation process shall not begin nor shall funds provided in section eight of this article be available until the plan has received approval by the Tax Commissioner: Provided, That any initial plan that has not received approval by the commissioner prior to May 1, 1991, shall be submitted on or by such date to the valuation commission for resolution prior to July 1, 1991, by which date all counties shall have an approved valuation plan in effect.

(d) Upon approval of the valuation plan, the assessor shall immediately begin implementation of the valuation process. Any change in value discovered subsequent to the certification of values by the assessor to the county commission, acting as the board of equalization and review, in any given year shall be placed upon the property books for the next certification of values: Provided, That notwithstanding any other provision of this code to the contrary, the Property Valuation Training and Procedures Commission may authorize the Tax Commissioner to approve a valuation plan and the Board of Public Works to submit such a plan which would permit the placement of proportionately uniform percentage changes in values on the books that estimate the percentage difference between the current assessed value and sixty percent of the fair market value for classes or identified subclasses of property and distribute the change between the two tax years preceding the tax year beginning on July 1, 1993. This procedure may be used in lieu of placing individual values on the books at sixty percent of value as discovered or may be in addition to the valuation. If this procedure is adopted by a county, then property whose reevaluation is the
responsibility of the Board of Public Works and the state
Tax Commissioner shall have its values estimated and
placed on the books in like manner. The estimates shall be
based on the best information obtained by the assessor, the
Board of Public Works and the Tax Commissioner and the
changes shall move those values substantially toward sixty
percent of fair market value, such sixty percent to be
reached on or before July 1, 1993.

e) (1) The county assessor shall establish and maintain
as official records of the county tax maps of the entire
county drawn to scale or aerial maps, which maps shall
indicate all property and lot lines, set forth dimensions or
areas, indicate whether the land is improved and identify the
respective parcels or lots by a system of numbers or symbols
and numbers, whereby the ownership of such parcels and
lots can be ascertained by reference to the appropriate
records: Provided, That all such records shall be established
and maintained in accordance with legislative rules
promulgated by the commission.

(2) The paper and electronic tax maps including mineral
boundary maps shall be made available for sale by the
assessor and the map sales unit of the Property Tax Division
of the Department of Revenue. In connection with these
sales the assessor and map sales unit of the Property Tax
Division of the Department of Revenue shall offer the
electronic tax maps in all available formats and with all
underlying map data including that necessary to tie
electronic parcel data to associated land book ownership
and related data. Sales of paper and electronic tax maps
shall be without limitation as to the reproduction or
disclosure of information contained therein or thereon by
the purchaser. The fees charged for the sale or reproduction
of paper and electronic tax maps by the assessor or the map
sales unit of the Property Tax Division of the Department of
Revenue shall be limited to those reasonably calculated to
reimburse it for its actual cost in making reproductions of
the records (i.e., the charge shall be no more than what is
reasonable for disclosure of the information under a Freedom of Information Act request under article one, chapter twenty-nine-b of this code). Tax maps are prepared for taxation purposes only and the assessor and map sales unit of the Property Tax Division of the Department of Revenue may have no liability to any third party for any errors or omissions associated therewith or in connection with the use of tax maps for any other purpose.

(f) Willing and knowing refusal of the assessor or the county commission to comply with and effect the provisions of this article, or to correct any deficiencies as may be ordered by the Tax Commissioner with the concurrence of the valuation commission under any authority granted pursuant to this article or other provisions of this code, are grounds for removal from office. A removal may be 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.

For the purpose of this section, the word “page” is defined as being a paper or electronic writing of not more than legal size, 8 1/2” x 14”.

(a) When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk’s certificate of recordation thereon and indexing in a proper index, the clerk of the county commission shall charge and collect the following fees:

(1) Twenty-five dollars for a deed of conveyance (with or without a plat), trust deed, fixture filing or security agreement concerning real estate lease.
(2) Forty dollars for a trustee’s report of sale for any property for which additional information and filing requirements are required by section eight-a, article one, chapter thirty-eight of this code. Twenty dollars of each recording fee received pursuant to this subdivision shall be deposited into the county’s General Revenue Fund and $20 paid quarterly by the clerk of the county commission to the West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code.

(3) Ten dollars for a financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code.

(4) Ten dollars for a plat or map (with no deed of conveyance).

(5) No charge for a service discharge record.

(6) Ten dollars for any document or writing other than those referenced in subdivisions (1), (2), (3), (4) and (5) of this subsection.

(7) One dollar for each additional page for documents or writings containing more than five pages.

For any of the documents admitted to record pursuant to this subsection, if the clerk of the county commission has the technology available to receive these documents in electronic form or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost for filing paper documents.

(8) Of the fees collected pursuant to subdivision (1), subsection (a) of this section, $10 shall be deposited in the county general fund in accordance with section twenty-eight of this article, $5 shall be deposited in the county reappraisal fund and dedicated to the operation of the assessor’s office mapping division, $3 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code, $1 to the
county 9-1-1 center and $2 shall be deposited in the county
general fund and dedicated to the operation of the county
clerk’s office. Four dollars of the fees collected pursuant to
subdivision (1), subsection (a) of this section and $5 of the
fees collected pursuant to subdivision (6), subsection (a) of
this section shall be paid by the county clerk into the State
Treasury and deposited in equal amounts for deposit into the
Farmland Protection Fund created in article twelve, chapter
eight-a of this code for the benefit of the West Virginia
Agricultural Land Protection Authority and into the
Outdoor Heritage Conservation Fund created in article two-
g, chapter five-b of this code. The funds deposited in the
State Treasury pursuant to this subdivision may only be
used for costs, excluding personnel costs, associated with
purpose of land conservation, as defined in subsection (f),
section seven, article two-g, chapter five-b of this code.

(b) Five dollars for administering any oath other than
oaths by officers and employees of the state, political
subdivisions of the state or a public or quasi-public entity of
the state or a political subdivision of the state, taken in his
or her official capacity.

(c) Fifty-five dollars for issuance of marriage license
and other duties pertaining to the marriage license
(including preparation of the application, administrating the
oath, registering and recording the license, mailing
acknowledgment of minister’s return to one of the licensees
and notification to a licensee after sixty days of the
nonreceipt of the minister’s return). This fee is reduced to
$35 if the applicants present a premarital education course
completion certificate issued pursuant to section seven
hundred one, article two, chapter forty-eight of this code and
dated within one year of the application for a marriage
license.

(1) One dollar of the marriage license fee received
pursuant to this subsection shall be paid by the county clerk
into the State Treasury as a state registration fee in the same
(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury for the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code; and

(4) If a premarital education course completion certificate is not presented, the county clerk shall, on or before the tenth day of each month, transmit $20 of the marriage license fee received pursuant to this subsection to the State Treasurer for deposit in the State Treasury as follows:

(A) Five dollars to the credit of the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(B) Five dollars to the credit of the special revenue account, hereby created, designated the Fund for Civil Legal Services for Low Income Persons, which shall consist of all gifts, grants, bequests, transfers, appropriations or other donations or payments which may be received and administered by the Division of Justice and Community Services from any governmental entity or unit or any person, firm, foundation or corporation for the purposes of this section, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Director of the Division of Justice and Community Services and shall be limited to grants to nonprofit agencies which provide civil legal services to low
income persons made at his or her discretion. Any balance
in the fund at the end of each fiscal year shall not revert to
the General Revenue Fund but shall remain in the fund and
be expended as provided by this section.

(C) Ten dollars to the credit of the Marriage Education
Fund created pursuant to section seven hundred two, article
two, chapter forty-eight of this code.

(d) (1) One dollar and fifty cents for a copy of any
writing or document, if it is not otherwise provided for.

(2) One dollar for each additional page if the writing or
documents contains more than two pages.

(3) One dollar for annexing the seal of the commission
or clerk to any paper.

(4) Five dollars for a certified copy of a birth certificate,
death certificate or marriage license.

(e) For copies of any record in electronic form or a
medium other than paper, a reasonable fee set by the clerk
of the county commission not to exceed the costs associated
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.


The State Police Forensic Laboratory Fund is hereby created within the Treasury of the state. The fund shall be administered by the superintendent and shall consist of all moneys made available for the operations of the State Police Forensic Laboratory from any source, including, but not limited to, all fees, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the forensic laboratory by the Legislature and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the operations of the State Police Forensic Laboratory and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in
accordance with the provisions of article three, chapter
twelve of this code and upon the fulfillment of the
provisions set forth in article two, chapter eleven-b of this
code: Provided, That for the fiscal year ending June 30,
2018, expenditures are authorized from collections rather
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.

(a) The clerk of a circuit court shall charge and collect
for services rendered by the clerk the following fees which
shall be paid in advance by the parties for whom services
are to be rendered:

(1) Except as provided in subdivisions (2) and (3) of this
subsection, for instituting any civil action under the Rules
of Civil Procedure, any statutory summary proceeding, any
extraordinary remedy, the docketing of civil appeals or
removals of civil cases from magistrate court, or any other
action, cause, suit or proceeding, $200, of which $30 shall
be deposited in the Courthouse Facilities Improvement
Fund created by section six, article twenty-six, chapter
twenty-nine of this code and $45 shall be deposited in the
special revenue account designated the Fund for Civil Legal
Services for Low Income Persons, established by paragraph
(B), subdivision (4), subsection (c), section ten of this
article, and $20 deposited in the special revenue account
created in section six hundred three, article twenty-six,
chapter forty-eight of this code to provide legal services for
domestic violence victims;

(2) For instituting an action for medical professional
liability, $400, of which $10 shall be deposited in the
Courthouse Facilities Improvement Fund created by section
six, article twenty-six, chapter twenty-nine of this code;
(3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate maintenance or annulment, $135;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, $85;

(5) For petitioning for an expedited modification of a child support order, $35;

(6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint or motion to intervene, $200, which shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article: Provided, That this subdivision and the fee it imposes does not apply in family court cases nor may more than one such fee be imposed on any one party in any one civil action; and

(7) Except for civil actions within the jurisdiction of family courts, for each defendant or respondent named in the initial pleading upon the institution of a civil action in which there are two or more named defendants, and for each additional defendant, respondent or third-party defendant subsequently named in a pleading filed in the civil action, $15, payable upon the institution of the civil action or upon the filing of the initial pleading that names the additional defendant, respondent or third-party defendant, of which $10 shall be deposited in the general fund of the county in which the office of the circuit clerk is located, and $5 shall be deposited in the State Police Forensic Laboratory Fund, established under section twenty-four-d, article two, chapter fifteen of this code: Provided, That for purposes of this subdivision, “defendant or respondent named” does not include those defendants or respondents identified as “John/Jane Doe.”
(b) In addition to the foregoing fees, the following fees shall be charged and collected:

(1) For preparing an abstract of judgment, $5;

(2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, $1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, $25;

(4) For issuing an execution, $25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, $25;

(6) For vacation or modification of a suggestee execution, $1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, $3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, $10, of which $5 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50 cents;

(10) For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, $20; and

(11) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, $50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.
(c) In addition to the foregoing fees, a fee for the actual amount of the postage and express may be charged and collected for sending decrees, orders or records that have not been ordered by the court to be sent by mail or express.

(d) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:

(1) In the case of a misdemeanor, $85; and

(2) In the case of a felony, $105, of which $10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(e) The clerk of a circuit court shall charge and collect a fee of $25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six,
chapter twenty-nine of this code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(f) The clerk of a circuit court shall charge and collect a fee of $10 for services rendered by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

(h) Fees for removal of civil cases from magistrate court shall be collected by the magistrate court when the case is still properly before the magistrate court. The magistrate court 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.


The commission shall have and may exercise the following powers and authority and shall perform the following duties:

(a) Designate emergency planning districts;

(b) Appoint local emergency planning committees for each emergency planning district and supervise and coordinate the activities of such committees;

(c) Revise any designations and appointments made under subsections (a) and (b) of this section as it deems appropriate: Provided, That any interested person may petition the state emergency response commission to modify the membership of a local emergency planning commission;

(d) Designate, if necessary, additional facilities which shall be subject to the requirements of this article, provided such designation is made after public notice and opportunity for comment as provided under article three, chapter twenty-nine-a of the code;

(e) Review the emergency response plans submitted by the local emergency planning committees and make recommendations to the local committees on revisions of the plan that may be necessary to ensure coordination of such plan with the plans of other emergency planning districts and other existing state and local emergency response plans;

(f) Enter into cooperative agreements with other state agencies designating specific responsibilities to be performed by such state agencies to implement the provisions of this article;
(g) Promulgate procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing rules of practice before the commission;

(h) Promulgate procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing procedures for receiving and processing requests from the public for information in accordance with the provisions of 42 U.S.C. §11001, *et seq.*, and this article, and prescribing forms and instructions for requesting such information;

(i) Promulgate procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing forms and instructions for the submission and receipt of confidential information;

(j) Promulgate rules establishing the following fees which shall be deposited in a special account for the administration of this act and which shall be reasonably calculated to recover the necessary expenses incurred by the Office of Emergency Services in the administration of this article:

1. An emergency planning notification fee not to exceed $100 to be paid by a facility when it makes the emergency planning notification required under SARA, Title III, sections 301 through 303;

2. An inventory form fee not to exceed $2,500 to be paid annually by a facility when it submits the emergency and hazardous chemical inventory forms or material safety data sheet required under SARA, Title III, sections 311 and 312; and

3. A surcharge fee not to exceed twenty percent of the fee otherwise payable to be paid by facilities which fail to pay the fees in paragraphs (1) and (2) in a timely manner;

(k) Establish an emergency planning grant program to be administered by the commission. The grant programs will be funded by fees collected to administer this act
pursuant to subdivision (j) of this section. The commission shall promulgate rules which establish the method of awarding such grants to local emergency planning committees to assist them in performing their responsibilities under this article;

(l) Promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article;

and

(m) The chairman of the commission may order a facility owner or operator to comply with the requirements of applicable federal law, this article and any rules or regulations promulgated thereunder. When the chairman has reasonable cause to believe that there exists a failure to comply with the provisions of applicable federal law, this article or any rule or regulation promulgated thereunder or any order entered by the chairman, he or she may request the Attorney General to commence an action for civil penalties, injunctive relief or other appropriate relief to enforce such provisions, rules and regulations or order. Such action may be brought in any federal district court having jurisdiction, or in the Circuit Court of Kanawha County or the county where the facility or a major portion 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.]
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.

(a) Annual assessment on licensed physicians. —
(1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial assessment in the amount of $125 from every physician licensed by each board for the privilege of practicing medicine in this state. The assessment is to be imposed and collected on forms prescribed by each licensing board. The assessment shall be collected as part of licensure or license renewal beginning July 1, 2016, for licenses issued or renewed in calendar year 2016 through calendar year 2019: Provided, That the following physicians shall be exempt from the assessment:

(A) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of post-graduate medical education in this state;

(B) A physician who has presented suitable proof that he or she is on active duty in the armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(C) A physician who practices solely under a special volunteer medical license authorized by section ten-a, article three, chapter thirty of this code or section twelve-b, article fourteen of said chapter;

(D) A physician who holds an inactive license pursuant to subsection (j), section twelve, article three, chapter thirty of this code or section ten, article fourteen of said chapter, or a physician who voluntarily surrenders his or her license: Provided, That a retired osteopathic physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she receives no monetary remuneration for any medical services provided, executed under the penalty of perjury and if executed outside the State of West Virginia, verified, may be considered to be licensed on an inactive basis: Provided, however, That if a physician or osteopathic physician elects to resume an active license to practice in the state and the physician or osteopathic physician has not paid the assessments during his or her inactive status, then
as a condition of receiving an active status license, the
physician or osteopathic physician shall pay the assessment
due in the year in which physicians or the osteopathic
physician resumes an active license; and

(E) A physician who practices less than forty hours a
year providing medical genetic services to patients within
this state.

(2) The entire proceeds of the annual assessment
collected pursuant to subsection (a) of this section shall be
dedicated to the Patient Injury Compensation Fund. The
Board of Medicine and the Board of Osteopathic Medicine
shall promptly pay over to the Board of Risk and Insurance
Management all amounts collected pursuant to this
subsection for deposit in the fund.

(3) Notwithstanding any provision of the code to the
contrary, a physician required to pay the annual assessment
who fails to do so shall not be granted a license or renewal
of an existing license by the Board of Medicine or the Board
of Osteopathic Medicine. Any license which expires as a
result of a failure to pay the required assessment shall not
be reinstated or reactivated until the assessment is paid in
full.

(b) Assessment on trauma centers. — From July 1, 2016
through June 30, 2020, an assessment of $25 shall be levied
by the Board of Risk and Insurance Management on trauma
centers for each trauma patient treated at a health care
facility designated by the Office of Emergency Medical
Services as a trauma center, as reported to the West Virginia
Trauma Registry. Beginning July 1, 2016, and annually
thereafter until June 30, 2020, the Board of Risk and
Insurance Management shall assess each trauma center for
trauma patients treated from January 1 to December 31 of
the previous year: Provided, That the assessment to be
collected by the Board of Risk and Insurance Management
on June 30, 2017, shall be based on each trauma patient
treated from January 1, 2016, to December 31, 2016.
Assessment on claims filed under the Medical Professional Liability Act. — From July 1, 2016, through June 30, 2020, an assessment of one percent of the gross amount of any settlement or judgment in a qualifying claim shall be levied.

1. For purposes of this subsection, a qualifying claim is any claim for which a screening certificate of merit, as that term is defined in section six, article seven-b, chapter fifty-five of this code, is required.

2. For any assessment levied pursuant to this subsection for which a judgment is entered by a court, the date of the entry of judgment shall be used to determine applicability of this provision. The defendant or defendants shall remit the assessment to the clerk of the court in which the qualified claim was filed. The clerk of the court shall then remit the assessment monthly to the State Treasury to be deposited in the fund.

3. For any assessment levied pursuant to this subsection on a settlement entered into by the parties, the date on which the agreement is formalized in writing by the parties shall be used to determine applicability of this provision. At the time that an action alleging a qualified claim is dismissed by the parties, the assessment shall be paid to the clerk of the court, who shall then remit the assessment to the State Treasury to be deposited in the fund. Collected assessments shall be remitted no less often than monthly. If a qualifying claim is settled prior to the filing of an action, the claimant, or his or her counsel, shall remit the payment to the Board of Risk and Insurance Management within sixty days of the date of the settlement agreement to be paid into the fund.

(d) Termination of assessments. — The requirements of this section shall terminate on the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has been paid or has been funded in its entirety. The Board of Risk and Insurance Management
shall submit a report to the Joint Committee of Government and Finance each year beginning January 1, 2018, giving recommendations based on actuarial analysis of the fund’s liability. The recommendations shall include, but not be limited to, discontinuance of the assessments provided for in this section, closure of the fund and transfer of the fund’s 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.

An execution issued under this article against money due and owing or to become due and owing from the state, or a state agency which shall be payable on the warrant of the State Auditor for the payment thereof directed to the judgment debtor must be served upon the State Auditor at his or her office in Charleston. In the case of money payable directly by any state agency the execution shall be served upon the auditor of such agency or, lacking such, upon the officer thereof whose duty it is to audit and/or to issue warrants, checks or orders for the payment of such claims. Such service shall be made by exhibiting and at the same time delivering a true copy of the original execution, to the proper officer, or to a person in his or her office designated and authorized by the State Auditor or head of such department, institution or agency, as the case may be, by writing filed in such office to receive it. Service of such an execution may be made by mail by the court or the clerk of the court who issued the execution or by the officer to whom the same is delivered or by any credible person, by enclosing the original suggestee execution in a postpaid wrapper addressed to the proper officer and agency together with a true copy of the suggestee execution. Service by mail shall not be deemed to be complete until duly admitted and
until the original execution shall have been returned to the
court or the clerk of the court who issued said execution.  
Such admission shall be made as soon as may be in the
regular course of administration after receipt of the
execution. The admission may be subscribed by the officer
upon whom the service is required by this section to be
made or by a person in his or her office designated and
authorized by the State Auditor or the head of a state agency,
as the case may be, by writing filed in such office to admit
service of suggestee executions.

A suggestee execution against a political subdivision of
the state shall be served upon the auditor thereof or the
doctor who, or the clerk of the board or any body which is
charged with the duty of auditing and/or issuing warrants,
checks or orders for the payment of such claims, in like
manner as service hereunder upon state officers, except that
service by mail shall not be sufficient or binding.

Service of a vacating or modifying order issued
pursuant to section six of this article shall be made in the
manner herein prescribed for the service of a suggestee
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.

It shall be the duty of the proper officer, after service of
an execution under this article, bearing the notation required
by section four of this article if directed against salary or
wages, to pay to the judgment creditor such sums as may be
or shall thereafter be due to the judgment debtor from
the suggestee, or the amount thereof prescribed in section
three of this article in the case of salary or wages, during the
life of the execution until it shall be wholly satisfied. The
proper officer or suggestee upon whom the execution or any
renewal execution is served shall once every ninety days
during the life of such execution and any renewal execution
pay over as aforesaid the full amount of money payable, held or retained pursuant to such execution or renewal execution during the preceding ninety days.

A public officer who shall either pay over or fail or refuse to pay over, in satisfaction of such execution, money due the judgment debtor shall be personally liable therefor only if he or she shall have acted in bad faith, even though such payment or failure or refusal to pay shall have been in violation of the rights of one or more parties in interest.

If a political subdivision be the suggestee and shall fail or refuse to pay over to the judgment creditor the amount due the judgment debtor or the required percentage thereof in the case of salary or wages, it shall be liable to an action therefor by the judgment creditor named in the execution and the amount recovered in the action shall be applied toward the payment of the execution.

No judgment may be recovered against the state as suggestee but a judgment creditor may bring an action against the proper officer for a declaratory judgment establishing his or her right to have sums due or to become due to his or her judgment debtor or from the state or a state agency applied in satisfaction of a suggestee execution issued on his or her judgment pursuant to this article. Such an action may be brought against the State Auditor only in the circuit court of Kanawha County. Costs shall be in the discretion of the court.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation; requirements; fees.

(a) Notwithstanding any provision of this article to the contrary, any county or municipality may choose to institute a teen court program in accordance with this section.
(b) A juvenile may be given the option of proceeding in a teen court program as an alternative to the filing of a formal proceeding pursuant to section seven hundred four or section seven hundred fourteen of this article if:

1. The juvenile is alleged to have committed a status offense or an act of delinquency that would be a misdemeanor if committed by an adult;
2. The juvenile is alleged to have violated a municipal ordinance over which municipal court and state court have concurrent jurisdiction; or
3. The juvenile is otherwise subject to the provisions of this article.

(c) If the circuit court or municipal court finds that the offender is a suitable candidate for the teen court program, it may extend the option to enter the program as an alternative procedure. A juvenile may not enter the teen court program unless he or she and his or her parent or guardian consent to participating in the program.

(d) Any juvenile who does not successfully cooperate in, and complete, the teen court program and any disposition imposed during the juvenile's participation shall be returned to the circuit court for further disposition as provided by section seven hundred twelve or seven hundred fourteen of this article, as the case may be, or returned to the municipal court for further disposition for cases originating in municipal court consistent with any applicable ordinance.

(e) The following provisions apply to all teen court programs:

1. The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.
(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury from a standard list of available community service programs provided by the county juvenile probation system and a standard list of alternative consequences that are consistent with the purposes of this article. The performance of the juvenile shall be monitored by the county juvenile probation system for cases originating in the circuit court’s jurisdiction, or municipal teen court coordinator or other designee for cases originating in the municipal court’s jurisdiction. The juvenile shall also perform at least two sessions of teen court jury service and, if considered appropriate by the circuit court judge or teen court judge, participate in an education program. Nothing in this section may be construed so as to deny availability of the services provided under section seven hundred twelve of this article to juveniles who are otherwise eligible for the service.

(f) The rules for administration, procedure and admission of evidence shall be determined by the chief circuit judge or teen court judge, but in no case may the court require a juvenile to admit the allegation against him or her as a prerequisite to participation in the teen court program. A copy of these rules shall be provided to every teen court participant.

(g) Each county or municipality that operates, or wishes to operate, a teen court program as provided in this section is hereby authorized to adopt a mandatory fee of up to $5 to
be assessed as provided in this subsection. Municipal courts may assess a fee pursuant to this section upon authorization by the city council of the municipality. The clerk of the court of conviction shall collect the fees established in this subsection. Assessments collected by the clerk of the court pursuant to this subsection shall be deposited into an account specifically for the operation and administration of the municipal teen court program. Assessments collected by the clerk of the circuit court or magistrate court pursuant to this subsection shall be remitted monthly to the sheriff for deposit into an account specifically for the operation and administration of the county teen court program.

(h) Any mandatory fee established by a county commission or city council in accordance with this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo contendere for each violation committed in the county or municipality of any felony, misdemeanor or any local ordinance, including traffic violations and moving violations but excluding municipal parking ordinances. Municipalities operating teen courts are authorized to use fees assessed in municipal court pursuant to this subsection for operation of a teen court in their municipality.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.


(a) Pleading, practice and procedure in matters before a family court judge are governed by rules of practice and procedure for family law promulgated by the Supreme Court of Appeals.

(b) The West Virginia Rules of Evidence apply to proceedings before a family court judge.
(c) Hearings before a family court shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family court judge and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family court judge, the magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family court judge shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a “writing” or “recording” as those terms are defined in rule 1001 of the West Virginia Rules of Evidence and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an original under such rule. The party requesting the copy shall pay the circuit clerk an amount equal to the actual cost of the tape or other medium or the sum of $5, whichever is greater. Unless otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript. The circuit clerk shall remit those amounts received monthly to the State Treasury for deposit in the West Virginia Supreme Court of Appeals fund designated for receipt of such moneys.

(d) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all documents filed in the proceeding, constitute the exclusive record and, on payment of lawfully prescribed costs, shall be made available to the parties.

(e) In any proceeding in which a party has filed an affidavit that he or she is financially unable to pay the fees and costs, the family court judge shall determine whether either party is financially able to pay the fees and costs.
based on the information set forth in the affidavit or on any evidence submitted at the hearing. If a family court judge determines that either party is financially able to pay the fees and costs, the family court judge shall assess the payment of such fees and costs accordingly as part of an order. The provisions of this subsection do not alter or diminish the provisions of section one, article two, chapter fifty-nine of this code.

(f) The clerks of the circuit court shall have, within the scope of the jurisdiction of family courts, all the duties and powers prescribed by law that clerks exercise on behalf of circuit courts: Provided, That a family court judge may not require the presence or attendance of a circuit clerk or 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.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement of business entities organized within the state, as follows:

(A) Articles of incorporation of for-profit corporation, $100;

(B) Articles of incorporation of nonprofit corporation, $25;

(C) Articles of organization of limited liability company, $100;

(D) Agreement of a general partnership, $50;

(E) Certificate of a limited partnership, $100;

(F) Agreement of a voluntary association, $50;

(G) Articles of organization of a business trust, $50;

(H) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax, $25;

(I) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company or of certificate of
limited partnership or agreement of voluntary association, $25;

(J) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust, $25;

(K) Registration of trade name, otherwise designated as a true name, fictitious name or D. B. A. (doing business as) name for any domestic business entity as permitted by law, $25;

(L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts, $25;

(M) Plus for each additional party to the merger in excess of two, $15;

(N) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity, $25;

(O) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership, $25;

(P) Revocation of voluntary dissolution of a corporation, voluntary association or business trust, $15;

(Q) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership, $25;
(R) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution, $25.

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

(A) Certificate of authority of for-profit corporation, $100;
(B) Certificate of authority of nonprofit corporation, $50;
(C) Certificate of authority of foreign limited liability companies, $150;
(D) Certificate of exemption from certificate of authority, $25;
(E) Registration of a general partnership, $50;
(F) Registration of a limited partnership, $150;
(G) Registration of a limited liability partnership for two-year term, $500;
(H) Registration of a voluntary association, $50;
(I) Registration of a trust or business trust, $50;
(J) Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax, $25;
(K) Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust, $25;
(L) Registration of trade name, otherwise designated as a true name, fictitious name or D. B. A. (doing business as) name for any foreign business entity as permitted by law, $25;

(M) Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust, $25;

(N) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts, $25;

(O) Plus, for each additional party to the merger in excess of two, $5;

(P) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate articles or certificate to organize the surviving entity, $25;

(Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited liability partnership, limited liability company, voluntary association or business, trust $25;

Notwithstanding any other provision of this section to the contrary, after June 30, 2008, the fees described in this subdivision that are collected for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company shall be deposited in the general administrative fees account established by this section.

(3) For receiving, filing and recording a change of the principal or designated office, change of the agent of process and/or change of officers, directors, partners, members or managers, as the case may be, of a corporation,
limited partnership, limited liability partnership, limited liability company or other business entity as provided by law, $15.

(4) For receiving, filing and preserving a reservation of a name for each one hundred twenty days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company, $15;

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation, $10;

(B) Certificate of existence of a domestic limited liability company and certificate of authorization foreign limited liability company, $10;

(C) Certificate of existence of any business entity, trademark or service mark registered with the Secretary of State, $10;

(D) Certified copy of corporate charter or comparable organizing documents for other business entities, $15;

(E) Plus, for each additional amendment, restatement or other additional document, $5;

(F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership, $25;

(G) And for the annual renewal of the name registration, $10;

(H) Any other certificate not specified in this subdivision, $10.

(6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:
(A) Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions, $10;

(B) Plus, for each additional certificate pertaining to the same transaction, $5;

(C) Any other certificate not specified in this subdivision, $10;

(D) For acceptance, indexing and recordation of service of process any corporation, limited partnership, limited liability partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law, $15;

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State, $5;

(F) For shipping and handling expenses for execution of service of process upon any defendant outside the United States by registered mail, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State, $15;

(7) For a search of records of the office conducted by employees of or at the expense of the Secretary of State upon request, as follows:

(A) For any search of archival records maintained at sites other than the office of the Secretary of State no less than, $10;

(B) For searches of archival records maintained at sites other than the office of the Secretary of State which require more than one hour, for each hour or fraction of an hour consumed in making a search, $10;
(C) For any search of records maintained on site for the purpose of obtaining copies of documents or printouts of data, $5;

(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor any actual cost, but not less than, $25;

(E) The cost of the search is in addition to the cost of any copies or printouts prepared or any certificate issued pursuant to or based on the search.

(F) For recording any paper for which no specific fee is prescribed, $5.

(8) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:

(A) For a copy of any paper or printout of electronic data, if one sheet, $1;

(B) For each sheet after the first, 50 cents;

(C) For sending the copies or lists by fax transmission, $5;

(D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the Secretary of State at a rate approximating $2 plus 10 cents per page and rounded to the nearest dollar;

(E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available printed format, plus, for each required disk, which shall be provided by the Secretary of State, $5.
(b) The Secretary of State may propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, for charges for online electronic access to database information or other information maintained by the Secretary of State.

(c) For any other work or service not enumerated in this section, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.

(d) The records maintained by the Secretary of State are prepared and indexed at the expense of the state and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

(e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.

(f) There is hereby continued in the State Treasury a special revenue account to be known as the Service Fees and Collections Account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Notwithstanding any other provision of this code to the contrary, except as provided in subsection (h) of this section and section two-a of this article, one half of all the fees and service charges established in the following sections and for the following purposes shall be deposited by the Secretary of State or other collecting agency to that special revenue account and used for the operation of the office of the Secretary of State:
(1) The annual attorney-in-fact fee for corporations and limited partnerships established in section five, article twelve-c, chapter eleven of this code;

(2) The fees received for the sale of the State Register, Code of State Rules and other copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of this code;

(3) The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and professional solicitations established in sections five, nine and fifteen-b, article nineteen, chapter twenty-nine of this code;

(4) The annual attorney-in-fact fee for limited liability companies as designated in section one hundred eight, article one, chapter thirty-one-b of this code and established in section two hundred eleven, article two of said chapter: Provided, That after June 30, 2008, the annual report fees designated in section one hundred eight, article one, chapter thirty-one-b of this code shall upon collection, be deposited in the General Administrative Fees Account described in subsection (h) of this section;

(5) The filing fees and search and copying fees for uniform commercial code transactions established by section five hundred twenty-five, article nine, chapter forty-six of this code;

(6) The annual attorney-in-fact fee for licensed insurers established in section twelve, article four, chapter thirty-three of this code;

(7) The fees for the application and record maintenance of all notaries public established by section twenty, article four, chapter thirty-nine of this code;

(8) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;
(9) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(10) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;

(11) All fees for services, the sale of photocopies and data maintained at the expense of the Secretary of State as provided in this section; and

(12) All registration, license and other fees collected by the Secretary of State not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds $500,000 as of June 30, 2003, and each year thereafter, shall be expired to the state fund, General Revenue Fund

(h) (1) Effective July 1, 2008, there is hereby created in the State Treasury a special revenue account to be known as the General Administrative Fees Account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this subsection.

(2) After June 30, 2008, all the fees and service charges established in section two-a of this article for the following purposes shall be collected and deposited by the Secretary
(A) The annual report fees paid to the Secretary of State by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies;

(B) The fees for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a) of this section; and

(C) The fees for the purchase of date and updates related to the state’s Business Organizations Database described in section two-a of this article.

(i) There is continued in the office of the Secretary of State a noninterest-bearing, escrow account to be known as the Prepaid Fees and Services Account. This account shall be for the purpose of allowing customers of the Secretary of State to prepay for services, with payment to be held in escrow until services are rendered. Payments deposited in the account shall remain in the account until services are rendered by the Secretary of State and at that time the fees will be reallocated to the appropriate general or special revenue accounts. There shall be no fee charged by the Secretary of State to the customer for the use of this account and the customer may request the return of any moneys maintained in the account at any time without penalty. The assets of the prepaid fees and services account do not constitute public funds of the state and are available solely for carrying out the purposes of this section.

(j) A veteran-owned business, as defined in paragraph thirteen, subsection (a), section two-a of this article, commenced on or after July 1, 2015, is exempt from paying the fees prescribed in paragraphs (A), (B), (C), (D), (E), (F) and (G), subdivision (1), subsection (a) of this section.
(k) Notwithstanding any other provisions of this article, after July 1, 2017, the Secretary of State may offer a fee for expedited services which shall not exceed, $500.

(l) The fees provided for in this section shall remain in effect until such time as the Legislature has approved rules promulgated by the Secretary of State, in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing a schedule of fees for services.

§59-1-2b. Purchase of voter registration lists and election data; fees.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge the following fees for data originating in the statewide voter registration system to be paid by the person for whom the service is rendered at the time it is performed:

(1) Election Cycle Subscription Service .............$1,000
(2) Statewide Voter Registration List .................$500
(3) Master Voter History List Export ....................$500
(4) Statewide Early Voters List .............................$200
(5) Statewide Absentee Requests List ...................$200
(6) Statewide Absentee Received List ...................$200
(7) Partial Voter Registration List ........ Current hourly rate
(8) Voter History List ............................. Current hourly rate
(9) Complex Research Query................. Current hourly rate
(10) Update to a request made under subdivision (2), (4), (5), or (6) of this subsection during the election year in which the list was requested........... Current hourly rate
(11) Update to a request made under subdivision (3) between the day following the request date and the completion of voter history as required by section eighteen, article two, chapter three of this code for the next succeeding primary, general or odd-year election ............ Current hourly rate

(b) For the purposes of this section, “Election Cycle Subscription Service” includes:

(1) Statewide Registered Voter List updated monthly throughout the year and updated daily starting thirty days prior to election day through election day;

(2) Master Voter History List Export following certification of the primary, general and odd-year elections;

(3) Statewide All Mail-in Absentee Request List and Statewide Public Received Mail-in Absentee List for the primary, general and odd-year elections, updated daily starting thirty days prior to election day through ten days following election day; and

(4) Statewide Early Voters List for the primary, general and odd-year elections, updated daily starting on the first day of early voting through election day.

(c) At the time that a request is made under subdivision (7), (8) or (9), subsection (a) of this section, the current hourly rate, as determined by the Secretary of State, shall be communicated to the prospective purchaser along with an estimate of the number of hours needed to fulfill the request before any list is compiled.

(d) Net proceeds from the sale of data originating in the statewide voter registration system, along with any interest on such funds, shall be deposited into the State Election Fund as set forth in subsection (b), section forty-eight, article one, chapter three of this code.
(e) The fees provided for in this section shall remain in effect until such time as the Legislature has approved rules promulgated by the Secretary of State, in accordance with the provisions of article three, chapter twenty-nine-a of this 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.

(a) The President of the Senate and the Speaker of the House of Delegates shall each appoint five members of their respective houses, at least two of whom shall be members of the minority party, and at least one shall be a member of the Committee on Government Organization, to serve on an interim committee charged with studying flood damage reduction and flood plain management. The President and the Speaker shall each designate a Chair from among the five committee members of their respective houses. This committee shall be known as the “Joint Legislative Committee on Flooding” and shall study all activities relating to flood protection and shall make recommendations to the Joint Committee on Government and Finance, which offer solutions to reduce the reality and threat of future loss of life and property damages associated with flooding.

(b) The expenses of the committee are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

(c) The Chair of the State Resiliency Office, created pursuant to article thirty, chapter twenty-nine of this code, shall report quarterly to the committee, and shall prepare an annual report to the committee no later than December 31 of each year.

(d) The Chairs of the committee shall report annually, each January, to the Joint Committee on Government and Finance, with any proposals or legislation as may be deemed necessary to prevent or reduce the risk of flooding in this state.
ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-1. Short title; legislative findings; purpose.

(a) This article may be known and cited as the “Resiliency and Flood Protection Planning Act”.

(b) The West Virginia Legislature finds that:

(1) Flooding has affected each of the fifty-five counties and thirty-two major watersheds within the state;

(2) Over the past fifty-two years, more than two hundred and eighty-two West Virginians have died in floods;

(3) Between January 1996 and January 2017, there have been twenty-seven federal disaster declarations in West Virginia involving flooding; and

(4) In June 2016 much of West Virginia suffered devastating flooding.

(5) Despite the many state and federal flood protection programs and projects, flooding continues to be West Virginia’s most common and widespread natural disaster.

(c) It is the purpose of this article to provide a comprehensive and coordinated statewide resiliency and flood protection planning program to save lives, and develop community and economic resiliency plans including, but not limited to, reducing or mitigating flood damage while supporting economic growth and protecting the environment.

§29-31-2. State Resiliency Office.

(a) The State Resiliency Office is hereby created. The office shall be organized within the Development Office in
the Department of Commerce as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Coordinating Officer designated by the Governor for a particular event. The State Resiliency Office Board is also established and shall consist of the following eight members: the Secretary of the Department of Commerce or his or her designee; The Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the Secretary of the Department of Military Affairs and Public Safety or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West Virginia National Guard or his or her designee; and the Director of the Division of Homeland Security and Emergency Management within the Department of Military Affairs and Public Safety or his or her designee.

(b) The Secretary of the Department of Commerce shall be the chair of the State Resiliency Office Board. In the absence of the chair, any member designated by the members present may act as chair.

(c) The board shall meet no less than once each calendar quarter at the time and place designated by the chair. All decisions of the board shall be decided by a majority vote of the members.

(d) The chair shall provide adequate staff from their respective office, to ensure the meetings of the board are properly noticed, meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept and that reports of the board are 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;
(12) Coordinate, integrate and expand planning efforts in the state for hazard mitigation, long-term disaster recovery and economic diversification;

(13) Coordinate long-term disaster recovery efforts in response to disasters as they occur;

(14) Establish and facilitate regular communication between federal, state, local and private sector agencies and organizations to further economic and disaster resilience; and

(15) Take all other actions necessary and proper to effectuate the purposes of this article.

§29-31-4. Reporting to the Joint Legislative Committee on Flooding.

(a) The chair of the board of the State Resiliency Office shall report, at a minimum of quarterly, to the Joint Legislative Committee on Flooding, created pursuant to article fifteen, chapter four of this code, in sufficient detail for the committee to be aware of the activities of the board to assure progress toward reducing and mitigating flood damage within this state while respecting and complying with the Takings Clause of the United States Constitution, the West Virginia Constitution, and related precedential court opinions, and to develop legislative recommendations.

(b) The chair of the council shall submit an annual report to the committee by December 31 of each year, along with any recommended legislation, budget requests and a 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.

(a) In case of a vacancy, during the recess of the Senate, in any office, which vacancy the Governor is authorized to fill by and with the advice and consent of the Senate, the Governor shall, by appointment within ninety days, fill such vacancy until the next meeting of the Senate, when the Governor shall submit to the Senate a nomination to fill such vacancy and, upon confirmation of such nomination by the Senate, by a vote of a majority of all the members elected to the Senate, taken by yeas and nays, the person so nominated and confirmed shall hold said office during the remainder of the term for which his or her predecessor in office was
appointed, and until his or her successor shall be appointed
and qualified. No person whose nomination for office has
been rejected by the Senate shall again be nominated for the
same office during the session in which his or her
nomination was so rejected, unless at the request of the
Senate, nor shall the person be appointed to the same office
during the recess of the Senate. No appointee who resigns
from any such office prior to confirmation, or whose name
has not been submitted for confirmation while the Senate is
in session, shall be eligible, during the recess of the Senate,
to hold any office the nomination for which must be
confirmed by the Senate.

(b) Any person appointed to temporarily fill a vacancy
shall possess the qualifications required by law for that
vacant position, and may only remain in the vacated
position for a maximum of ninety days.

(c) If an employee of a state agency is temporarily
appointed to fill a vacancy, the employee may fill such
vacancy without resigning from the position he or she
ordinarily holds: Provided, That the employee’s
compensation shall be the greater of:

1. The employee’s regular salary in his or her usual
   position; or

2. The salary for the office the employee temporarily
   fills.

(d) If a vacancy is temporarily filled by a person not
otherwise employed by any agency of the State of West
Virginia, then that person shall be compensated at a rate no
greater than that of the salary for the office that person
temporarily fills.

(e) The bond, if any, required by law to be given by any
officer so temporarily appointed by the Governor, shall be
in such penalty as is required by law of the incumbent of
such office.
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.

(a) The Public Employees Insurance Agency Finance Board is continued and consists of the Secretary of the Department of Administration or his or her designee and eight members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and each
may serve until his or her successor is appointed and qualified. Members may be reappointed for successive terms. No more than five members, including the Secretary of the Department of Administration, may be of the same political party. Effective July 1, 2017, members of the board shall satisfy the qualification requirements provided for by subsection (b) of this section: Provided, That any member serving upon the effective date of this section who does not satisfy a requirement of subsection (b) may continue to serve until his or her successor has been appointed and qualified. The Governor shall make appointments necessary to satisfy the requirements of subsection (b) to staggered terms as determined by the Governor.

(b) (1) Of the eight members appointed by the Governor with advice and consent of the Senate:

(A) One member shall represent the interests of education employees. The member must hold a bachelor’s degree, must have obtained teacher certification, must be employed as a teacher for a period of at least three years prior to his or her appointment and must remain a teacher for the duration of his or her appointment to remain eligible to serve on the board.

(B) One member shall represent the interests of public employees. The member must be employed to perform full- or part-time service for wages, salary or remuneration for a public body for a period of at least three years prior to his or her appointment and must remain an employee of a public body for the duration of his or her appointment to remain eligible to serve on the board.

(C) One member shall represent the interests of retired employees. The member must meet the definition of retired employee as provided in section two of this article.

(D) One member shall represent the interests of a participating political subdivision. The member must have been employed by a political subdivision for a period of at
least three years prior to his or her appointment and must remain an employee of a political subdivision for the duration of his or her appointment to remain eligible to serve on the board. The member may not be an elected official.

(E) Four members must be selected from the public at large, meeting the following requirements:

(i) One member selected from the public at large must generally have knowledge and expertise relating to the financing, development or management of employee benefit programs;

(ii) One member selected from the public at large must have at least three years of experience in the insurance benefits business;

(iii) One member selected from the public at large must be a certified public accountant with at least three years of experience with financial management and employee benefits program experience; and

(iv) One member selected from the public at large must be a health care actuary or certified public accountant with at least three years of financial experience with the health care marketplace.

(2) No member of the board may be a registered lobbyist.

(3) All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article or gross immorality.

(c) The Secretary of the Department of Administration shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon
the written request to the chair of at least two members. The Director of the Public Employees Insurance Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Five members shall constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code. Any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant 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.

(a) This section and the requirements in this section may be referred to as the West Virginia Fairness In Competitive Bidding Act.

(b) As used in this section:

(1) “Lowest qualified responsible bidder” means the bidder that bids the lowest price and that meets, as a minimum, all the following requirements in connection with the bidder’s response to the bid solicitation. The bidder shall certify that it:

(A) Is ready, able and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the State of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(2) “The state and its subdivisions” means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(3) “State spending unit” means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

(4) “Alternates” means any additive options or alternative designs included in a solicitation for competitive bids that are different from and priced separately from what is included in a base bid.
(c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $25,000 in total cost. A vendor who has been debarred pursuant to sections thirty-three-b through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.

(d) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.

(e) Any solicitation of bids shall include no more than seven alternates. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form: Provided, That a public entity may accept an alternate out of the listed order if acceptance would not affect determination of the lowest qualified responsible bidder. Any unaccepted alternate contained within a bid shall expire one hundred fifty days after the date of the opening of bids for review.

Determination of the lowest qualified responsible bidder shall be based on the sum of the base bid and any alternates accepted.

(f) The apparent low bidder on a contract valued at more than $250,000 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure with a state spending unit shall submit a list of all subcontractors who will perform more than $25,000 of work on the project including labor and materials. This section does not apply to other construction projects such as highway, mine reclamation, water or sewer projects. The list shall include the names of the bidders and the license numbers as required by article eleven, chapter twenty-one
of this code. This information shall be provided to the state spending unit within one business day of the opening of bids for review prior to the awarding of a construction contract. If the apparent low bidder fails to submit the subcontractor list, the spending unit shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid. A subcontractor list may not be required if the bidder provides notice in the bid submission or in response to a request for a subcontractor list that no subcontractors who will perform more than $25,000 of work will be used to complete the project.

(g) Written approval must be obtained from the state spending unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

(1) The subcontractor listed in the original bid has filed for bankruptcy;

(2) The state spending unit refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to section thirty-three-d, article three, chapter five-a of this code or a suspension under section thirty-two, article three, chapter five-a of this code; or

(3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable or refuses to perform the subcontract.

(h) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to a prospective low bidder which the contracting public entity determines not to have met one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is
made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(i) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to awarding a contract.

(j) A public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-a of the Code of West Virginia.

(k) No officer or employee of this state or of a public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of an officer or employee or public entity may require that a performance bond, payment bond or surety bond required or permitted by this section be obtained from a particular surety company, agent, broker or producer.

(l) All bids shall be open in accordance with the provisions of section two of this article, except design-build
projects which are governed by article twenty-two-a of this chapter and are exempt from these provisions.

(m) Nothing in this section applies to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student’s training program;

(3) Emergency repairs to building components, systems, and public infrastructure. For the purpose of this subdivision, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure; and

(4) A situation where the state or subdivision thereof reaches an agreement with volunteers, or a volunteer group, in which the governmental body will provide construction or repair materials, architectural, engineering, technical or other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

(a) The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and
the execution of its powers and authority under this article:

Provided, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, operation or maintenance of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

(b) The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article.

(c) No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of $25,000 shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids.

(d) After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may consider expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules for the use, maintenance and operation of the works, and do all things necessary or expedient for the
successful operation thereof, and for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, stormwater and surface runoff water quality improvement activities necessary to comply with all federal and state requirements. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.

(e) Emergency repairs shall be exempt from the bidding requirements of subsection (c) of this section. For the purpose of this subdivision, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure.

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.

All contracts for work to be done by such sanitary district, the expense of which will exceed $25,000, shall be let to the lowest responsible bidder therefor. The board of trustees shall cause to be published a notice informing the public and contractors of the general nature of the work and of the fact that detailed plans, drawings and specifications are on file in the office of such board of trustees and calling for sealed proposals for the construction of the work to be done at a date not earlier than ten days after the last of such publications, such notice to be published as a Class II legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area for such publication shall be the sanitary district. Said board of trustees shall require each bidder to deposit with his or her respective bid a certified check for an amount not less than two and one-half percent of the engineer’s estimate of such work to insure the execution of the contract for which such bid is made. The board of trustees may impose such conditions as it may deem necessary upon the bidders with regard to bond and surety, guaranteeing the good faith and responsibility of such bidders, and the faithful performance of such work according to contract, or for any other purpose. The board of trustees shall have the right to reject any and all bids, but if it does reject all bids, before other bids may be received notices shall be published as originally required. The board of trustees shall have power to let portions of said proposed work under different contracts.

Any additions or extensions to any sewage disposal plant, or sewers or drains or any other work constructed under the provisions of this article, shall be built under contract entered into under the provisions of this section in the same manner as the contract for the original plant or work. The cost of such additions or extensions, and of any additional lands or rights-of-ways acquired by said board, may be met by the sale of additional bonds to be issued and sold by the trustees, and the levy of taxes and/or the collection of service charges to retire such bonds, all as provided in this article.

Emergency repairs shall be exempt from the bidding requirements of this section. For the purpose of this section, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure.

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.

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any works, or any trust indenture as provided for, shall be approved by the governing body of the municipality before the same shall be effective.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of $25,000, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids.

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be available or are made available as provided in
this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits, and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-7. Acquisition and operation of district properties; contracts to respond to emergency situations.

The board of these districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. All contracts involving the expenditure by the district of more than $25,000 for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such
publication shall be as specified in section two of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the Constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

Emergency repairs shall be exempt from the bidding requirements of this section. For the purpose of this section, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure.

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.
After July 1, 2008, any solicitation for a public improvement contract shall require each contractor that submits a bid for the work to submit an affidavit that the contractor has a written plan for a drug-free workplace policy prior to being awarded a contract. If the affidavit is not submitted with the bid submission, the public authority shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the affidavit within one business day of the request. Failure to submit the affidavit within one business day of receiving the request shall result in disqualification of the bid. A public improvement contract may not be awarded to a contractor who does not have a written plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion.

For subcontractors, compliance with this section may take place before their work on the public improvement is begun.

A drug-free workplace policy shall include the following:

(1) Establish drug testing and alcohol testing protocols that at a minimum require a contractor to:

(A) Conduct preemployment drug tests of all employees;

(B) Conduct random drug testing that annually tests at least ten percent of the contractor’s employees who perform safety-sensitive duties;

(C) Conduct a drug test or alcohol test of any employee who may have caused or contributed to an accident while conducting job duties where reasonable cause exists to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee’s physician when, but not limited to, the employer has evidence that an employee is or was using alcohol or a controlled substance drawn from specific
documented, objective facts and reasonable inferences drawn from these facts in light of experience and training.

The drug or alcohol test shall be conducted as soon as possible after the accident occurred and after any necessary medical attention has been administered to the employee.

(D) Conduct a drug test or alcohol test of any employee when a trained supervisor has reasonable cause to believe that the employee has reported to work or is working under the influence of a drug of abuse or alcohol. Written documentation as to the nature of a supervisor’s reasonable cause shall be created.

In order to ascertain and justify implementation of a reasonable cause test, all supervisors will be trained to recognize drug- and alcohol-related signs and symptoms.

(2) Require that all drug tests performed pursuant to this section be conducted by a laboratory certified by the United States Department of Health and Human Services or its successor;

(3) Establish standards governing the performance of drug tests by such a laboratory that include, but are not limited to, the following:

(A) The collection of urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions;

(B) The collection and testing of urine specimens with due regard for the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection and testing of specimens;

(C) The documentation of urine specimens through procedures that reasonably preclude the possibility of erroneous identification of test results and that provide the individual being tested a reasonable opportunity to furnish information identifying any prescription or nonprescription
(D) The collection, maintenance, storage and transportation of urine specimens in a manner that reasonably precludes the possibility of contamination or adulteration of the specimens;

(E) The testing of a urine specimen of an individual to determine if the individual ingested, was injected or otherwise introduced with a drug of abuse in a manner that conforms to scientifically accepted analytical methods and procedures that include verification and confirmation of any positive test result by gas chromatography or mass spectrometry.

(4) Establish standards and procedures governing the performance of alcohol tests;

(5) Require that a medical review officer review all drug tests that yield a positive result;

(6) Establish procedures by which an individual who undergoes a drug test or alcohol test may contest a positive test result;

(7) Require that when an employee of a contractor tests positive for a drug of abuse or alcohol, or if an employee is caught adulterating a drug or alcohol test, as defined in section four hundred twelve, article four, chapter sixty-a of this code, the employee is subject to appropriate disciplinary measures up to and including termination from employment, in accordance with the contractor’s written drug-free workplace policy. If not terminated, the employee is subject to random drug or alcohol tests at any time for one year after the positive test;

(8) Require that when a supervisor has reasonable cause to believe an employee is under the influence of a drug of abuse or alcohol at work and requires the employee to take a drug or alcohol test, the employee shall immediately be
suspended from performing safety-sensitive tasks by the contractor until such time as a drug or alcohol test is performed and results of that test are available;

(9) Require a contractor to provide to any employee testing positive for a drug of abuse or alcohol the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section;

(10) Require that a contractor assist an employee who voluntarily acknowledges that the employee may have a substance abuse problem by providing the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section;

(11) Require that a contractor establish a written drug-free workplace policy regarding substance abuse and provide a copy of the written policy to each of its employees and to each applicant for employment. The written policy shall contain, at a minimum, all of the following:

(A) A summary of all the elements of the drug-free workplace policy established in accordance with this article;

(B) A statement that it is the contractor’s intention to create a drug-free workplace environment;

(C) Identification of an employee who has been designated the contractor’s drug-free workplace representative;

(D) Shall list the types of tests an employee may be subject to, which may include, but are not limited to, the following:

(i) Preemployment;

(ii) Post-accident;
134 (iii) Random; and
135 (iv) Reasonable cause.
136 (12) Require that a contractor provide within six weeks of new employment at least two hours of drug-free workplace employee education for all employees unless that employee has already received such training anytime within a prior two-year period. The employee shall participate in drug-free workplace employee education at least biannually thereafter. The employee education shall include all of the following:
144 (A) Detailed information about the content of the contractor’s specific drug-free workplace policy and an opportunity for employees to ask questions regarding the policy;
148 (B) The distribution of a hard copy of the written drug-free workplace policy, including collecting an employee-signed acknowledgment receipt from each employee;
151 (C) Specific explanation of the basics of drugs and alcohol abuse, including, but not limited to, the disease model, signs and symptoms associated with substance abuse, and the effects and dangers of drugs or alcohol in the workplace; and
156 (D) A list of community resources where employees may seek assistance for themselves or their families.
158 (13) Require that a contractor provide at least two hours of drug-free workplace supervisor training for all supervisory employees and annually thereafter. The supervisor training shall include all of the following:
162 (A) How to recognize a possible drug or alcohol problem;
164 (B) How to document behaviors that demonstrate a drug or alcohol problem;
(C) How to confront employees with the problem from observed behaviors;

(D) How to initiate reasonable suspicion and post-accident testing;

(E) How to handle the procedures associated with random testing;

(F) How to make an appropriate referral for assessment and assistance;

(G) How to follow up with employees returning to work after a positive test; and

(H) How to handle drug-free workplace responsibilities in a manner that is consistent with the applicable sections of any pertinent collective bargaining agreements.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-11. Notice included with invitations to bid and specifications.

Any architect or engineer preparing any plan and specification for contracting work to be performed in this state shall include in the plan, specification and invitation to bid a reference to this article informing any prospective bidder that the person’s contractor’s license number shall be included on any bid submission. A subcontractor shall furnish his or her contractor’s license number to the contractor prior to the award of the contract. If an apparent low bidder for a public improvement project, as defined in article one-d, chapter twenty-one of this code, fails to submit a license number in accordance with this section, the public authority, as defined in article one-d, chapter twenty-one of this code, shall promptly request by telephone and electronic mail that the low bidder and the second low bidder provide the license number within one business day of the request. Failure of the bidder to provide the license number within one business day of receiving the request shall result in disqualification of the bid.
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.

(a) The Herbert Henderson Office of Minority Affairs within the Office of the Governor is continued. The office shall:
(1) Provide a forum for discussion of issues that affect the state’s minorities;

(2) Identify and promote best practices in the provision of programs and services to minorities;

(3) Review information and research that can inform state policy as to the delivery of programs and services to minorities;

(4) Make recommendations in areas of policy and allocation of resources;

(5) Apply for grants, and accept gifts from private and public sources for research to improve and enhance minority affairs;

(6) Integrate and coordinate state grant and loan programs established specifically for minority related issues;

(7) Award grants, loans and loan guaranties for minority affairs programs and activities in this state if such funds are available from grants or gifts from public or private sources;

(8) Identify other state and local agencies and programs that provide services or assistance to minorities;

(9) Establish the appropriate program linkages with related federal, state and local agencies and programs including, but not limited to, the Office of Minority Health located within the Department of Health and Human Resources and the Economic Development Authority established pursuant to article fifteen, chapter 31 of this code; and

(10) Provide recommendations to the Governor and the Legislature regarding the most appropriate means to provide programs and services to support minority groups in the state.
(b) On or before January 1 of each year, the office shall submit a report to the Governor and the Joint Committee on Government and Finance. The report may include, but is not limited to, findings and recommendations regarding:

1. The extent to which programs and services for minorities are available in the state, and to which funding for providing those programs and services is available;

2. The most appropriate means for the planning, delivery and evaluation of existing and needed programs and services for minority groups in the manner that best promotes diversity and regional, cultural and ethnic sensitivity;

3. Recommendations for the coordination of programs and services to minority groups throughout the state and with those of other states and the federal government;

4. Identifications of governmental and private agencies, offices, departments or other entities in existence or recommended for creation that would, alone or in concert, most effectively improve the delivery of programs and services to minority groups throughout the state;

5. Recommendations for changes to law that would facilitate the achievement of the objectives of the office; and

6. Other matters as the office may determine appropriate to its purposes.

(c) The Governor shall appoint an executive director of the office to carry out its functions, and shall provide funding and offices for those purposes. The executive director shall serve at the will and pleasure of the Governor.

(d) The executive director may hire one administrative assistant to assist in carrying out the functions of the office.
(e) On or before January 1 of each year, the office shall report to the Select Committee on Minority Affairs Interim Committee on the efforts and progress of the office.

(f) The executive director shall review and consider any recommendations of the Select Committee on Minority Affairs Interim Committee’s report and recommendations.

§5-26-2. Minority Affairs Fund created; purpose.

There is continued in the State Treasury a Special Revenue Fund to be known as the “Minority Affairs Fund.” shall consist of all gifts, grants, bequests, transfers, appropriations or other donations or payments received by the Herbert Henderson Office of Minority Affairs from any governmental entity or unit or any person, firm, foundation or corporation for the purposes of this article and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Executive Director of the Herbert Henderson Office of Minority Affairs to provide matching funds to obtain federal funds for the delivery of programs and services to minorities in this state, to award grants, loans and loan guaranties for minority affairs programs and activities and for performance of the duties of the office prescribed in this article. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter eleven-b of this code.

§5-26-3. Establishment of a community-based pilot project.

(a) The office shall establish a community-based pilot project. The pilot expires on July 1, 2021. The pilot shall develop a model to promote public health through comprehensive community development in communities across West Virginia. This model shall address poverty,
substance abuse and other social determinants of health; improve community and populations’ health; improve labor force participation; and support economic development through comprehensive community development in rural, suburban and urban communities.

(b) As selected by the executive director, the pilot shall include a collaborative of nonprofit organizations.

(c) The pilot shall be funded by coordinating existing funded projects. The pilot shall leverage existing resources, including housing and urban development services provided by the federal government and any youth, education and family services offered by the state government or other local organizations. If funds are available, the pilot project may receive funding from the office.

(d) The office shall report to the Select Committee on Minority Affairs Interim Committee on the efforts and 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.]
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.

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

1. To establish centralized offices to provide purchasing and travel services to the various state agencies;

2. To simplify, clarify and modernize the law governing procurement by this state;

3. To permit the continued development of procurement policies and practices;

4. To make as consistent as possible the procurement rules and practices among the various spending units;

5. To provide for increased public confidence in the procedures followed in public procurement;

6. To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

7. To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

8. To foster effective broad-based competition within the free enterprise system;
(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units in order for those spending units to better serve this state’s businesses and residents.

(b) The Director of the Purchasing Division shall, at the time of appointment:

(1) Be a graduate of an accredited college or university; and

(2) Have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(c) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(d) The provisions of this article do not apply to the judicial branch, the West Virginia State Police, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by the State Board of Education for use in and in support of the public schools.

(e) During the 2018 calendar year, the Legislative Auditor shall audit purchasing procedures of the West Virginia State Police pursuant to the exemption provided in subsection (d) of this section and report the results to the Joint Committee on Government and Finance.
(f) During the 2019 calendar year, the Legislative Auditor shall audit purchasing procedures of the West Virginia State Police pursuant to the exemption provided in subsection (d) of this section and report the results to the Joint Committee on Government and Finance.

(g) On or before December 31, 2020, the West Virginia State Police shall report to the Joint Committee on Government and Finance on the effects of exempting said agency from the provisions of this article, including but not limited to, any realized cost savings and changes in purchasing policies resulting from such exemption.

(h) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds.

§5A-3-3. Powers and duties of Director of Purchasing.

1 The director, under the direction and supervision of the secretary, is the executive officer of the Purchasing Division and has the power and duty to:

2 (1) Direct the activities and employees of the Purchasing Division;

3 (2) Ensure that the purchase of or contract for commodities and services are based, whenever possible, on competitive bid;

4 (3) Purchase or contract for, in the name of the state, the commodities, services and printing required by the spending units of the state government;

5 (4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;

6 (5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;
(6) Have charge of central storerooms for the supply of spending units as the director considers advisable;

(7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided as the director considers advisable;

(8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that the vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve the contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve the contracts as to form: Provided, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation or to construction or reclamation contracts entered into by the Department of Environmental Protection: Provided, however, That the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by the board of directors of the state College System, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: Provided further, That the provisions of this subdivision do not apply to the West Virginia State Police and the West Virginia Office of Laboratory Services;

(10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state
an opportunity to bid and to assure that the specifications and
descriptions do not favor a particular brand or vendor. If the
director determines that any such specifications or descriptions
as written favor a particular brand or vendor or if it is decided,
either before or after the bids are opened, that a commodity or
service having different specifications or quality or in different
quantity can be bought, the director may rewrite the
solicitation and the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit
when the director has credible evidence that a spending unit
has violated competitive bidding or other requirements
established by this article and the rules promulgated
hereunder. Failure to abide by the notice may result in
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.

Notwithstanding any provisions of section one or three of this article to the contrary, the provisions of this article do not apply 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: Provided, That on or before July 1, 2020, the Legislative Auditor shall audit the purchasing procedures of the facilities described in this section and report the results to the Joint Committee on Government and Finance on the effects of exempting said facilities from the provisions of this article, including, but not limited to, any realized cost savings and changes in purchasing 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.

This article creates no liability upon any person acting in his or her capacity as a state officer, employee, or retiree or former employee of the State of West Virginia; or upon the legal dependents, heirs and assignees of any such person; nor, upon any agency of the executive, legislative, or judicial branch of government of the State of West Virginia, for any transaction which is compromised by any third party’s illegal act or inappropriate use associated with 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.

(a) Effective July 1, 2017, the Division of Energy is hereby continued, but shall be designated and known as the Office of Energy, and shall be organized within the Development Office of the Department of Commerce. All references throughout this code to the Division of Energy shall be construed to refer to the Office of Energy. The office may receive federal funds.

(b) The office is intended to provide leadership for developing energy policies emphasizing the increased efficiency of energy use, the increased development and production of new and existing domestic energy sources, the increased awareness of energy use on the environment and the economy, dependable, efficient and economical statewide energy systems capable of supporting the needs of the state, increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased, reduce the ratio energy consumption to economic activity and maintain low-cost energy. The energy policies and
development plans shall also provide direction for the private sector.

(c) The office shall have authority over the energy efficiency program existing under the West Virginia Development Office.

(d) The office shall develop an energy policy and shall report the same back to the Governor and the Joint Committee on Government and Finance before December 1, 2007. The energy policy shall be a five-year plan setting forth the state’s energy policies and shall provide a direction for the private sector. Prior to the expiration of the energy policy, the office shall begin review of the policy and submit a revised energy policy to the Governor and the Joint Committee on Government and Finance six months before the expiration of the policy.

(e) The office shall prepare and submit an annual energy development plan to the Governor and the Joint Committee on Government and Finance on or before December 1 of each year. The development plan shall relate to the office’s implementation of the energy policy and the activities of the office during the previous year. The development plan shall include any recommended legislation. The Public Energy Authority, the Office of Coalfield Community Development, the energy efficiency program, the Department of Environmental Protection and the Public Service Commission, in addition to their other duties prescribed by this code, shall assist the office in the development of an energy policy and related development plans. The energy development plan shall set forth the plans for implementing the state’s energy policy and shall provide a direction for the private sector. The energy development plan shall recognize the powers of the Public Energy Authority as to development and financing of projects under its jurisdiction and shall make such recommendations as are reasonable and practicable for the exercise of such powers.

(f) The office shall hold public hearings and meetings with notice to receive public input regarding proposed
energy policies and development plans. The energy policy and development plans required by subsections (d) and (e) of this section shall address increased efficiency of energy use, traditional and alternative energy, water as a resource and a component of energy production, energy distribution systems, the siting of energy facilities, the increased development and production of new and existing domestic energy sources, increased awareness of energy use on the environment and the economy, energy infrastructure, the development and implementation of renewable, clean, technically innovative and advanced energy projects in this state. Projects may include, without limitation, solar and wind energy, low-impact hydro power, geothermal, biomass, landfill gas, fuel cells, renewable hydrogen fuel technologies, waste coal, coal mine methane, coal gasification to ultraclean fuels, solid waste to fuel grade ethanol and coal liquefaction technologies.

(g) The office may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to implement an energy policy and development plan in accordance with the provisions of this chapter.

(h) The energy policy and development plans required by subsections (d) and (e) of this section shall identify and report on the energy infrastructure in this state and include without limitation energy infrastructure related to protecting the state’s essential data, information systems and critical government services in times of emergency, inoperativeness or disaster. In consultation with the Director of the Division of Homeland Security and Emergency Management, the office shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster.

(i) In preparing or revising the energy policy and development plan, the office may rely upon internal staff reports or the advice of outside advisors or consultants and
may procure such services with the consent of the Secretary of Commerce. The office may also involve national, state and local government leadership and energy experts.

(j) The office shall prepare an energy use database, including without limitation, end-use applications and infrastructure needs for different classes of energy users including residential, commercial and industrial users, data regarding the interdependencies and sources of electricity, oil, coal, water and gas infrastructure, data regarding energy use of schools and state-owned facilities and collect data on the impact of the energy policy and development plan on the decisions and strategies of energy users of the state.

(k) The office shall promote collaboration between the state’s universities and colleges, private industry and nonprofit organizations to encourage energy research and leverage available federal energy research and development resources.

(l) The office shall promote initiatives to enhance the nation’s energy security through research and development directed at transforming the state’s energy resources into the resources that fuel the nation.

(m) The office shall work with the President of the United States and his or her administration to develop a plan that would allow West Virginia to become the leader in transitioning the United States to a new energy future.

(n) The office is to determine the best way for West Virginia to utilize its resources and any federal funding to develop the technologies that are necessary for such a transition.

(o) The office is to clearly articulate West Virginia’s position on an energy solution for the United States that encompasses clean coal, natural gas, transtech energy technologies and renewable energy technologies.
(p) The office shall develop and distribute an informational program and policies that emphasize the importance of West Virginia energy resources and their positive impact on the eastern seaboard and the nation.

(q) The office shall monitor legal challenges to the energy industries in the state and submit a report quarterly to the Joint Committee on Government and Finance. The report shall contain information relating to any litigation that challenges any statute that could affect the production, distribution and utilization of natural resources of the state.

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.

(a) The West Virginia Public Energy Authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

(b) The authority shall be controlled, managed and operated by a seven-member board known as the West Virginia Public Energy Authority Board, which is continued. The seven members include the Secretary of the Department of Commerce or designee; the Secretary of the Department of Environmental Protection or designee; the Director of the Economic Development Authority or designee; and four members representing the general public. The public members are appointed by the Governor, by and with the advice and consent of the Senate, for terms of one, two, three and four years, respectively.
(c) On June 30, 2007, the terms of all appointed members shall expire. Not later than July 1, 2007, the Governor shall appoint the public members required in subsection (b) of this section to assume the duties of the office immediately, pending the advice and consent of the Senate.

(d) The successor of each appointed member is appointed for a four-year term. A vacancy is filled by appointment by the Governor in the same manner as the original appointment. A member appointed to fill a vacancy serves for the remainder of the unexpired term. Each board member serves until a successor is appointed.

(e) No more than three of the public members may at any one time belong to the same political party. No more than two public members may be employed by or associated with any industry the authority is empowered to affect. One member shall be a person with significant experience in the advocacy of environmental protection. Board members may be reappointed to serve additional terms.

(f) All members of the board shall be citizens of the state. Before engaging in their duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of $25,000 in the manner provided in article two of said chapter. The Governor may remove any board member as provided in section four, article six of said chapter.

(g) The Secretary of the Department of Commerce or his or her designee shall serve as chair. The board annually elects one of its members as vice chair and appoints a secretary-treasurer who need not be a member of the board.

(h) Four members of the board constitute a quorum and the affirmative vote of the majority of members present at any meeting is necessary for any action taken by vote of the board. A vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all
the rights and perform all the duties of the board and the authority.

(i) The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of $50,000 in the manner provided in article two, chapter six of this code.

(j) Each public member shall be reimbursed for reasonable expenses incurred in the discharge of official duties. All expenses incurred by the board shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(k) In addition to such other duties and responsibilities as may be prescribed in this code, the Office of Energy is responsible for managing and administering the daily functions of the authority and for performing all other functions necessary to the effective operation of the authority.

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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.

(a) Beginning July 1, 2017, each agency listed in the online state phone directory shall update the employee information in the directory, as required in this subsection, or provide to the Office of Technology the following information for each agency employee:

(1) Employee name;

(2) Office location and mailing address, including name of city and zip code;

(3) Office telephone number, including extension; and

(4) Electronic mail address.

(b) Each agency listed in the online state phone directory shall update the online state phone directory information within thirty days after personnel action or event that would require the agency to add, modify, or delete information from the directory, or the agency shall provide that information to the Office of Technology.

(c) The Office of Technology shall, within thirty days of receipt of updated employee information from an agency,
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 all respects as previously constituted in the state government, but is hereby designated as the state Tax Division of the Department of Revenue.

5 (b) The Tax Commissioner is the chief executive officer of the state Tax Division and shall be appointed by the Governor, by and with the advice and consent of the Senate,
to serve at the will and pleasure of the Governor for the term for which the Governor was elected and until a successor has been appointed and has qualified.

(c) The Tax Commissioner, before entering upon the duties of office, shall take the oath or affirmation prescribed by section 5, article IV of the Constitution. The Tax Commissioner shall give bond with good security, to be approved by the Governor, in the penalty of $15,000. The Tax Commissioner shall be repaid his or her actual disbursements for traveling expenses. The Tax Commissioner shall be provided with an office in a state owned or leased building and with furniture, office equipment and any necessary clerical assistance.

(d) The Tax Commissioner has control and supervision of the state Tax Division and is responsible for the work of each of its sections or other subunits. Each section or bureau shall be headed by a director appointed by the Tax Commissioner and who is responsible to the Tax Commissioner for the work of his or her section or bureau. The Tax Commissioner may create any sections or bureaus and employ any necessary staff or employees to administer the state tax laws for which the Tax Commissioner or Tax Division is responsible, within the amount of expenditures appropriated for operation of the Tax Division by the Legislature. The Tax Commissioner has authority to appoint an assistant Tax Commissioner who shall be his or her principal assistant. The powers and duties vested in the Tax Commissioner by this chapter and any other provisions of law may be delegated by the Tax Commissioner to the assistant or other employees, but the Tax Commissioner is responsible for all official acts of his or her delegates.

(e) Background checks.

(1) The commissioner is authorized to conduct a criminal records check through the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation, and such other police or
investigative organization or agency as the Tax Commissioner may designate.

(2) Investigations may be conducted for:

(A) Applicants or prospective applicants for employment with the Tax Division,

(B) Current and preexisting employees of the Tax Division,

(C) Applicants or prospective applicants for contract employment with the Tax Division,

(D) Current and preexisting contractors that work with or for the Tax Division, and

(E) Any other person or entity that may handle, review or possess federal tax information or state tax information.

(3) These investigations may be conducted for the purpose of determining whether an applicant for employment with the Tax Division, or an individual, company or entity, that is being evaluated as a potential contractor with the Tax Division, is suitable for such employment, or for the purpose of determining suitability of an individual to be granted access to federal tax information, that is subject to the disclosure restrictions of 26 U.S.C. § 6103, or for any other lawful purpose.

(4) Background investigations of any individual, corporation, limited liability company, partnership or other entity or organization, or of any officer, owner, representative, agent, employee or principal of any such corporation, limited liability company, partnership or other entity or organization pursuant to this section may include, but not be limited to:

(A) Federal Bureau of Investigation (FBI) fingerprint results;
(B) A check of an individual’s criminal history in all states of the United States;

(C) A check of the criminal history in all states of the United States of a corporation, limited liability company, partnership or other entity or organization, or of any officer, owner, representative, agent, employee or principal of any such corporation, limited liability company, partnership or other entity or organization; and

(D) Investigation of records of local law-enforcement agencies where the individual has lived, worked, or attended school within the preceding five years, or longer, as the Tax Commissioner may determine, to identify:

(i) Any arrests of the individual or of an officer, owner, representative, agent or principal of a corporation, limited liability company, partnership or other entity or organization.

(ii) Any criminal record of a corporation, limited liability company, partnership or other entity or organization, or of any officer, owner, representative, agent, employee or principal of any such corporation, limited liability company, partnership or other entity or organization.

(iii) Misbehavior or trends of misbehavior that may not have been reported to the FBI database, but which provide information regarding character and suitability of an individual to hold a responsible employment position or to receive and handle federal tax information or state tax information.

(iv) The citizenship and residency of an individual.

(v) Validation of an individual’s eligibility to legally work in the United States.

(5) The result of any criminal records or criminal history check shall be sent to the commissioner, and any other state or
federal agency having a lawful interest in the results of such an investigation, as designated by the Tax Commissioner.

(f) The Tax Commissioner, if he or she considers the action necessary, may request the Attorney General to appoint assistant attorneys general who shall perform duties as required by the Tax Commissioner. The Attorney General, in pursuance of the request, may select and appoint assistant attorneys general, with the consent of the Tax Commissioner, to serve during the will and pleasure of the Attorney General, and the assistants shall be paid out of any funds made available for that purpose by the Legislature to 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.

(a) *Purpose.* — The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers’ privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens’ right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

(b) *Exceptions to confidentiality.* —

(1) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the name and address of every taxpayer and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter and article one, chapter five-e of this code. The categories by dollar amount of credit received are as follows:

(A) More than $1 but not more than $50,000;

(B) More than $50,000 but not more than $100,000;

(C) More than $100,000 but not more than $250,000;

(D) More than $250,000 but not more than $500,000;

(E) More than $500,000 but not more than $1 million;

and

(F) More than $1 million.

(2) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the following information regarding a compromise of a pending civil tax case that occurs on or after the effective date of this section in which the Tax Commissioner is required to seek the written recommendation of the Attorney General and the Attorney
General has not recommended acceptance of the compromise or when the Tax Commissioner compromises a civil tax case for an amount that is more than $250,000 less than the assessment of tax owed made by the Tax Commissioner:

(A) The names and addresses of taxpayers that are parties to the compromise;

(B) A summary of the compromise;

(C) Any written advice or recommendation rendered by the Attorney General regarding the compromise; and

(D) Any written advice or recommendation rendered by the Tax Commissioner’s staff.

Under no circumstances may the tax return of the taxpayer or any other information which would otherwise be confidential under other provisions of law be disclosed pursuant to the provisions of this subsection.

(3) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by the return information, to believe that a criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may enter into written exchange of information agreements with the commissioners of Labor, Employment Security, Alcohol Beverage Control and Workers’ Compensation to disclose and receive timely return information. The Tax Commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding additional agencies with which written exchange of information agreements may be sought but may not promulgate emergency rules regarding these additional agencies. The agreements shall
be published in the State Register and are only for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection do not preclude or limit disclosure of tax information authorized by other provisions of this code. Confidential return information so disclosed remains confidential in the other agency to the extent provided by section five-d of this article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into a written agreement with the State Treasurer to disclose to the State Treasurer the following business registration information:

(A) The names, addresses and federal employer identification numbers of businesses which have registered to do business in West Virginia; and

(B) The type of business activity and organization of those businesses.

Disclosure of this information shall begin as soon as practicable after the effective date of this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code. The provisions of this subsection do not preclude or limit disclosure of tax information authorized by other provisions of this code. Confidential return information disclosed hereunder or thereunder remains confidential as provided by section five-d of this article and by other applicable federal or state laws.

(6) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may disclose to the Attorney General any tax return, report, declaration or tax return information, including the identity of a taxpayer, that relates to any taxpayer’s sales of tobacco products subject
to state excise tax or to such sales of tobacco products that were manufactured or imported by a nonparticipating manufacturer as defined in section two, article nine-d of chapter sixteen of this code, for the purpose of enforcement of articles nine-b and nine-d, chapter sixteen of this code, or for the purpose of representing the State of West Virginia in any arbitration or litigation arising under the Tobacco Master Settlement Agreement or articles nine-b and nine-d, chapter sixteen of this code. Nothing herein shall authorize the disclosure of any taxpayer’s income tax returns or business franchise tax returns, or authorize the use of the disclosed information for any purpose other than as specified herein.

(7) Notwithstanding any provision of this code to the contrary, the Attorney General, upon the consent of the Tax Commissioner, may disclose information provided by the Tax Commissioner under the authority of subdivision six of this subsection as follows:

(A) To a party or parties participating in arbitration or litigation arising under the terms of the Tobacco Master Settlement Agreement; or

(B) To a judge, arbitrator, administrative law judge, legal counsel or other officer, official or participant in proceedings for or relating to administration, implementation, enforcement, defense or settlement and arbitration of the provisions of articles nine-b and nine-d, chapter sixteen of this code.

(C) Notwithstanding any provision of this code to the contrary, the Attorney General may introduce into evidence or disclose the information in the arbitration or litigation proceedings or an action for administration, implementation, enforcement, defense or settlement and arbitration of the provisions of articles nine-b and nine-d, chapter sixteen of this code.
(D) This subdivision does not apply to a document, tax return or other information subject to disclosure restrictions imposed by federal statute or regulation.

(E) No disclosure may be made pursuant to this subdivision unless it is subject to a protective order or agreement restricting the use of the disclosed information to the proceeding, arbitration or litigation;

(8) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into a written exchange agreement with the Auditor to disclose certain taxpayer information to facilitate participation in the following:

(A) The federal offset program authorized by section thirty-seven, article one, chapter fourteen of this code; and

(B) The state offset program, as authorized by subsection (h), section thirty-seven, article one, chapter fourteen of this code, for the purpose of protecting return information as defined in section five-d, article ten of this chapter and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

(C) The taxpayer information exchanged or disclosed pursuant to this subdivision is to be used only for the purpose of facilitating the collection of unpaid and delinquent tax liabilities through offset against state payments due and owing to taxpayers, vendors and contractors providing goods or services to the state, its departments, agencies or institutions.

(D) The Tax Commissioner may disclose the following taxpayer information:

(i) Name;

(ii) Address;
(iii) Social Security number or tax identification number;

(iv) Amount of the tax liability; and

(v) Any other information required by the written agreement.

(E) Disclosure of this information begins as soon as practicable after the effective date of this subdivision.

(F) The provisions of this section do not preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder remains confidential to the extent provided by section five-d of this article and by other applicable federal or state laws.

(c) Tax expenditure reports. — Beginning on January 15, 1992, and every January 15 thereafter, the Governor shall submit to the President of the Senate and the Speaker of the House of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures. Within three-year cycles, the reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information available to the Tax Commissioner. For purposes of this section, the term “tax expenditure” means a provision in the tax laws administered under this article including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in special circumstances. The Tax Commissioner shall promulgate rules setting forth the procedure by which he or she will compile the reports and setting forth a priority for the order in which the reports will be compiled according to type of tax expenditure.

(d) Federal and state return information confidential. — Notwithstanding any other provisions of this section or
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.

(a) Except as provided in subsection (b) of this section, the commissioner shall utilize the Attorney General for all legal assistance and services as provided by law.
(b) The commissioner may:

1. Employ a competent legal staff adequate for the ordinary legal services required by him or her and shall provide therefor such quarters, equipment, facilities, services and stenographic and other personnel as may be necessary: Provided, That for purposes of this subdivision, “ordinary legal services” does not include the retention or hiring of outside legal counsel; and

2. Employ such additional legal counsel as he or she deems necessary upon a reasonable fee basis to perform legal services in acquiring, by right of eminent domain or otherwise, property, or an estate, right or interest therein.


In addition to all other duties, powers and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

1. Exercise general supervision over the state road program and the construction, reconstruction, repair and maintenance of state roads and highways;

2. Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways in the various sections and areas of the state;

3. Conduct investigations and experiments, hold hearings and public meetings and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

4. Enter private lands to make inspections and surveys for road and highway purposes;
(5) Acquire, in name of the department, by lease, grant, right of eminent domain or other lawful means all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the State Capitol of Virginia which may be considered necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the State of West Virginia, which when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days’ duration, for instruction of his or her employees, which is held in conjunction with West Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies and all other matters of interstate or national interest;

(9) Classify and reclassify, locate and relocate, expressway, trunkline, feeder and state local service roads and designate by number the routes within the state road system;

(10) Create, extend or establish, upon petition of any interested party or parties or on the commissioner’s own initiative, any new road or highway found necessary and proper;
(11) Exercise jurisdiction, control, supervision and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate and close any road or highway, or any part of any road or highway, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing or upon investigation initiated by the commissioner;

(13) Close any state road while under construction or repair and provide a temporary road during the time of the construction or repair;

(14) Adjust damages occasioned by construction, reconstruction or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road rights-of-way, bridges and approaches to bridges and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement or maintenance;

(19) Acquire, establish, construct, maintain and operate, in the name of the department, roadside recreational areas along and adjacent to state roads and highways;
(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia State Aeronautics Commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any municipality and upon terms that are agreeably arranged;

(22) Institute complaints before the Public Service Commission or any other appropriate governmental agency relating to freight rates, car service and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies, subject to section seven of this article, to enforce his or her orders, to compel compliance with requirements of law and to protect and preserve the state road and highway system or any part of the system;

(24) Make and promulgate rules for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;

(25) Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;

(26) Designate and define any construction and maintenance districts within the state road system that is found expedient and practicable;

(27) Contract for the construction, improvement and maintenance of the roads;
(28) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and including all fiscal and financial matters of the department;

(31) Establish and advance a right-of-way Acquisition Revolving Fund, a Materials Revolving Fund and an Equipment Revolving Fund;

(32) Enter into contracts and agreements with and cooperate in programs of counties, municipalities and other governmental agencies and subdivisions of the state relating to plans, surveys, construction, reconstruction, improvement, maintenance and supervision of highways, roads, streets and other travel ways when and to the extent determined by the department to be expedient and practical;

(33) Report, as provided by law, to the Governor and the Legislature;

(34) Purchase materials, supplies and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials which cannot be used advantageously and beneficially by the department in the state road program by transfer of the supplies and materials to other governmental agencies and institutions by exchange, trade or sale of the supplies and materials;

(36) Investigate road conditions, official conduct of department personnel and fiscal and financial affairs of the department and hold hearings and make findings thereon or
(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the Division of Highways after May 1, 1999, that have been authorized by the provisions of section five-b, article seventeen-a of this chapter;

(39) Take actions necessary to alleviate any conditions as the Governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the Division of Highways; and

(40) Provide family restrooms at all rest areas along interstate highways in this state, all to be constructed in accordance with federal law.

CHAPTER 113


[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]
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 provisions of article three, chapter twenty-nine-a of this code by emergency and legislative rules, filed no later than October 1, 2003, a permit application procedure for the issuance of permits pursuant to the authority contained within this article: Provided, That the commission shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or 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.

(a) (1) The Legislature finds that ginseng trade must be controlled in order to protect the survival of wild ginseng as evidenced by its listing in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It is the policy of this state to regulate the commerce in ginseng in a manner that protects the survival of wild ginseng.

(2) For purposes of this section:

(A) “Certified” means the ginseng carries a certificate of origin issued by the director which allows the export from West Virginia of ginseng legally harvested in this state;

(B) “Commercial use” means to sell or to use ginseng for financial gain;

(C) “Cultivated ginseng” means ginseng that is purposefully planted in beds under artificial shade using standard horticultural practices such as mechanical tillage, fertilization, weed control, irrigation and pesticides;

(D) “Dealer” means a person who purchases ginseng for purposes of commercial use;

(E) “Digger” means a person who digs, collects or gathers wild ginseng by searching woodlands to find the plants;

(F) “Director” means the Director of the Division of Forestry;

(G) “Division” means the Division of Forestry;
(H) “Export” means the movement of ginseng from state to state as well as sending it abroad;

(I) “Ginseng” means whole, sliced or parts of roots of cultivated ginseng, woods grown ginseng, wild simulated ginseng and wild ginseng, excluding manufactured parts, products, and derivatives, such as powders, pills, extracts, tonics, teas and confectionary;

(J) “Green ginseng” means a fresh wild ginseng root that has not been intentionally subjected to a drying process and from which most natural moisture has not been removed by drying.

(K) “Grower” means a person who purposefully plants and grows cultivated ginseng, woods-grown ginseng or wild simulated ginseng for purposes of commercial use: Provided, That a grower does not include a digger who plants wild ginseng seed from the wild ginseng plants he or she digs, collects or gathers;

(L) “Harvest” means to dig, collect or gather ginseng;

(M) “Person” means an individual, corporation, partnership, firm or association;

(N) “Rootlets” means woods-grown or wild simulated one to two-year old ginseng roots commonly sold as transplants to growers;

(O) “Wild ginseng” means *Panax quinquefolius* L. that is not grown or nurtured by a person regardless of the putative origin of the plants: Provided, That wild ginseng may originate from seeds planted by a digger at the same site from which the digger harvests the wild ginseng;

(P) “Wild simulated ginseng” means ginseng that is purposefully planted in the woods without a bed being prepared and without the use of any chemical weed, disease or pest control agents;
“Woods-grown ginseng” means ginseng that is purposefully planted in beds prepared in the woods in a manner that uses trees to provide necessary shade and which may be grown with the use of chemical or mechanical weed, disease or pest control agents.

(A) The Division of Forestry shall regulate the growing, digging, collecting, gathering, possessing and selling of ginseng.

(B) The division may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this section including the amount of any permit fee.

(C) For purposes of regulating the growing, harvesting and commercial use of ginseng, a division employee may enter upon any public or private property, other than a dwelling house, at reasonable times, in order to inspect the ginseng operation or records. A person may not obstruct or hinder the employee in the discharge of his or her enforcement duties.

(D) All moneys received from permit fees and civil penalties assessed pursuant to this section shall be credited to the special account within the Division of Forestry to be used for the purposes set forth in section three of this article.

(E) The site plats required to be submitted to the division and other information identifying the specific location of ginseng plants are not open to public inspection pursuant to article one, chapter twenty-nine-b of this code since they disclose information having a significant commercial value.

(b) (1) The digging season for wild ginseng begins on September 1, and ends on November 30, of each year. It is unlawful for a person to dig, collect or gather wild ginseng between December 1, and August 31 of the following year.
(2) A person digging, collecting or gathering wild ginseng upon the enclosed or posted lands of another person shall first obtain written permission from the landowner, tenant or agent, and shall carry the written permission on his or her person while digging, collecting or gathering wild ginseng upon the enclosed or posted lands. It is unlawful to dig, collect or gather wild ginseng from the property of another without the written permission of the landowner.

(3) A person digging, collecting or gathering wild ginseng shall plant the seeds from the wild ginseng plants at the time and at the site from which the wild ginseng is harvested. It is unlawful to remove wild ginseng seeds from the site of collection.

(4) It is unlawful to dig, collect or gather wild ginseng less than five years old.

(5) A person may not rescue wild ginseng plants endangered by ground-disturbing activities unless he or she has first obtained a moving permit from the division. The person shall provide the reason for moving the plants, the current location of the plants, the proposed new planting site and other information required by the division.

(6) It is unlawful to plant ginseng or ginseng seed and to dig, collect or gather ginseng on West Virginia public lands, except by land grant university researchers performing research or demonstration projects regarding the growing, cultivating or harvesting of ginseng: Provided, that it is unlawful for anyone to plant ginseng or ginseng seed and to dig, collect or gather ginseng on state wildlife management areas or on state parks.

(c) (1) A person may not act as a grower unless he or she has obtained a grower’s permit from the division.

(2) Prior to planting cultivated, woods-grown or wild simulated ginseng, a grower shall:
(A) Submit to the director a plat of the exact planting location prepared by a licensed surveyor or a registered forester as defined in article nineteen, chapter thirty of this code, along with information verifying the name of the landowner: Provided, That if the grower is not the landowner, the grower shall also submit written permission from the landowner to grow and harvest cultivated, woods-grown or wild simulated ginseng on that property.

(B) Obtain a written determination from the director certifying that the planting area is free from wild ginseng; and

(C) Submit other information required by the division.

(3) A grower shall keep accurate and complete records on each ginseng planting on forms provided by the division. The records shall be available for inspection by a division employee and shall be submitted to the division at intervals established by rule by the division. A grower shall maintain records for a period of not less than ten years. The information required to be kept shall include:

(A) The origin of ginseng seed, rootlets or plants;

(B) The location of purposefully planted cultivated, wild simulated and woods-grown ginseng and a site plat of the planting;

(C) The original of the director’s determination that the site was free from wild ginseng at the time of planting;

(D) The date each site was planted;

(E) The number of pounds of seeds planted, or the number and age of rootlets, or both; and

(F) Other information required by the division.

(4) A grower may harvest cultivated ginseng on or after the effective date of this section throughout the year.
(5) A grower may harvest wild simulated and woods-grown ginseng from September 1, through November 30, of each year.

(6) It is unlawful for a person to dig, collect or gather wild simulated and woods-grown ginseng between December 1 and August 31.

(7) It is unlawful to dig, collect and gather wild simulated and woods-grown ginseng less than five years old.

(8) A grower shall comply with the certification procedures set forth in subdivision (f) of this section.

(9) For planting locations in existence prior to July 1, 2005, provide proof of having purchased ginseng seed, rootlets or plants for planting for a minimum of one or more of the five years immediately prior to July 1, 2005, and sign a certification that to the best of his or her knowledge, no wild ginseng existed on the site at the time the ginseng was planted: Provided, That no grower may certify a planting location in existence prior to July 1, 2005, under this provision after December 31, 2009.

(d) (1) A person may not act as a dealer unless he or she has obtained a dealer’s permit from the division.

(2) A dealer shall keep accurate and complete records on his or her ginseng transactions on forms provided by the division. A dealer is required to maintain a record of all persons, including a digger, grower and dealer, involved in each purchase or sale transaction and shall include the name, address, permit number and a copy of each ginseng certification issued by the division. All records shall be available for inspection by a division employee. A dealer shall maintain records for a period of not less than ten years. In addition, a dealer is required to report the following information to the division monthly:

(A) The date of the transaction;
(B) The type of ginseng, whether wild, cultivated, woods-grown or wild simulated ginseng;

(C) Whether the ginseng is dried or green at the time of the transaction;

(D) The weight of the ginseng;

(E) The county from which the ginseng was harvested;

(F) The identification number from the state ginseng certification; and

(G) Other information required by the division.

(3) A dealer shall include a West Virginia export certificate, numbered by the division, with each shipment of ginseng transported out-of-state.

(4) A dealer may not import out-of-state ginseng into this state unless the ginseng is accompanied by a valid export certificate issued by the state of origin. A dealer must return uncertified ginseng to the state of origin within fifteen calendar days.

(5) It is unlawful to include false information on any certificate or record required to be completed or maintained by this section. All ginseng harvested in West Virginia must be certified by the director before being transported or shipped out-of-state.

(e) (1) A person may not act as a grower or act as a dealer unless he or she has been issued the appropriate permit by the division. A person must obtain a separate permit for each activity. Permit applications shall be made on forms provided by the division. The application for a permit shall be accompanied by the applicable permit fee. The division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. The division shall assign a permit
number to each person granted a permit and it shall keep
records of the permits issued.

(2) Permits expire on December 31 of each year for
growers and August 31 of each year for dealers. All permits
must be renewed annually. Renewal forms will be mailed to
current permit holders. The failure to receive a renewal form
does not relieve the permit holder of the obligation to renew.
The division may require a late fee when renewal is received
more than sixty days after the expiration of the current
permit.

(3) The permit holder shall notify the division of any
changes in the information on the permit.

(f) All ginseng harvested in this state shall be certified
as to type, whether wild, cultivated, woods grown or wild
simulated, and to its origin, weight and lawful harvest. Other information may be required for ginseng to be
certified by the division to comply with the Convention on
International Trade in Endangered Species of Wild Fauna
and Flora to allow for its export: Provided, That live one
and two-year old cultivated, woods-grown or wild
simulated rootlets sold by growers for propagation purposes
within the United States are not regarded as harvested and
are exempt from the certification requirement. All ginseng,
except cultivated ginseng, must be certified or weight
receipted by April 1 of the year following harvest: Provided,
however, That no ginseng may be certified between January
1 through March 31 unless the person requesting
certification displays a valid permit. It is unlawful for a
person to have in his or her possession uncertified wild
ginseng from April 1 through August 31.

(g) The director shall propose rules for legislative
approval in accordance with article three, chapter twenty-
nine-a of this code designed to implement the ginseng
certification process.
(h) The division may, by order entered in accordance with the provisions of article five, chapter twenty-nine-a of this code, deny, suspend or revoke the permit of a grower or dealer and may invalidate an export certificate completed by a dealer when the division finds that a grower or dealer has violated any provision of this section or a legislatively approved rule.

(i) The division may assess a civil penalty against a person who violates any provision of this section or a provision of a legislatively approved rule. The division may assess a monetary penalty of not less than $100 nor more than $500.

(j) Any person violating a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense, and for each subsequent offense, shall be fined not less than $500 nor more than $1,000, or confined in jail not more than six months, or both. The court, in imposing the sentence of a person convicted of an offense under this section, shall order the person to forfeit all ginseng involved in the offense.

(k) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the division, to institute proceedings and to prosecute the person charged with the violation.

ARTICLE 2A. PUBLIC MARKETS.

§19-2A-4. Permits to operate; application and hearing.

It shall be unlawful for any public market to be operated in this state without first having obtained from the commissioner of agriculture of West Virginia a permit therefor. Upon the filing of an application for such permit, the commissioner shall fix a time and place for hearing thereon and, after hearing, if it appear that the public interest require the same and that there is sufficient need for such market in the locality in which it is proposed to be
established, shall grant such permit, or deny the same if the
contrary appear: Provided, That the commissioner shall take
final action upon all completed permit applications within
thirty days of receipt if the application is uncontested, or
within ninety days if the application is contested.

ARTICLE 9A. FEEDING OF UNTREATED GARBAGE TO
SWINE.


Any person desiring to obtain a permit to feed garbage
to swine or to renew the same shall make written application
therefor to the commissioner on forms provided by the
commissioner. The commissioner shall take final action
upon all completed permit applications within thirty days of
receipt if the application is uncontested, or within ninety
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.

(a) No person shall violate any provision of this law or
any rule promulgated thereunder.

(b) No person shall move, transport, deliver, ship or
offer for shipment into or within this state any noxious weed
without first obtaining a permit from the commissioner and
such permit shall be issued only after it has been determined
that the noxious weed is generally present throughout the
state or is for scientific purposes subject to prescribed
safeguards: Provided, That the division shall take final
action upon all completed permit applications within thirty
days of receipt if the application is uncontested, or within
ninety days if the application is contested.

(c) The commissioner, in order to prevent the
introduction or dissemination of noxious weeds, is hereby
authorized to stop delivery, stop sale, seize, destroy, treat,
or order returned to the point of origin, at the owner’s expense, any noxious weed, article or substance, whatsoever, if it is being transported or moved within this state, or if it exists on any premises within the state, or if it is being brought into this state from any place outside thereof, if such is found by him or her to be infested with any noxious weed subject to this article.

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.


(a) Any person or persons whose name appears upon the label of any regulated product as manufacturer or distributor shall obtain a permit to distribute in the state prior to distributing the regulated product. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner, and shall be accompanied by a fee established by legislative rule: Provided, That the commissioner shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

(b) Each brand or grade of regulated product shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner, and shall be accompanied by a fee established by legislative rule. Upon approval by the commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of the following year.

The application for fertilizer, soil amendment or horticultural growing medium shall include the following information:

(1) The net weight;
(2) The brand and, in the case of fertilizer when primary nutrients are claimed, the grade;

(3) The guaranteed analysis, or other information related to ingredients, guaranteed analysis of ingredients, percentages of ingredients, source of ingredients, physical components, physical properties or nutrient analysis as the commissioner may require;

(4) The purpose of the product;

(5) Directions for application; and

(6) The name and address of the registrant.

(c) A distributor is not required to register any regulated product which is already registered under this article by another person, providing the label does not differ in any respect.

(d) A distributor is not required to register each grade of regulated product formulated according to specifications which are furnished by a consumer prior to mixing, but is required to register his or her firm in a manner and at a fee established by legislative rule, and to label the regulated product as provided in subsection (c), section three of this article.

(e) Any person applying for registration of a fertilizer or specialty fertilizer, soil amendment or horticultural growing medium shall include with the application a label and any advertising literature.

(f) The commissioner may require proof of any claims made for any regulated product. If no claims are made, he or she may require proof of the usefulness and value of the regulated product. For evidence of proof the commissioner may rely on experimental data, evaluations or advice supplied from such sources as the director of the agricultural experiment station. The experimental design shall be related to state conditions for which the product is intended. The
commissioner may accept or reject other sources of proof as additional evidence in evaluating regulated products.

(g) If the commissioner identifies any unregistered regulated product in commerce or any regulated product from any nonregistered manufacturer or distributor during the registration year, the commissioner shall give the grantor a grace period of fifteen working days from issuance of notification within which to register the regulated product or distributor. Any person required to register regulated products or as a distributor, who fails to register within the grace period shall pay to the commissioner a penalty fee as established by legislative rule in addition to the registration fee. The commissioner may issue an embargo order on any regulated product until the registration is issued.

(h) Exemptions for horticultural growing medium:

(1) Distribution of horticultural growing media planted with live plant material is exempt from the labeling and registration requirements of this article.

(2) Distribution of custom media is exempt from the registration requirements of this article, if it is prepared for a single end user.

(3) Distribution of horticultural growing media containing plant nutrients of three percent or less are exempt from the requirements of this article.

ARTICLE 34. DANGEROUS WILD ANIMALS ACT.

§19-34-6. Permit applications, requirements, issuance and revocation.

(a) Application. — A person applying for a permit to possess a dangerous wild animal shall submit an application that includes the following:

(1) A fee established by the board for each dangerous wild animal;
(2) The name, address and telephone number of the applicant, and the address where the dangerous wild animal is located;

(3) A description of each dangerous wild animal, including the scientific name, common name, permanent and unique identifier, and any information that would aid in the identification of the animal; and

(4) A description of the exact location on the property and a description of the enclosure or cage where each dangerous wild animal is kept.

(b) Permit requirements and restrictions. — The application shall state, and the person shall acknowledge his or her understanding, that:

(1) He or she may not breed, receive or replace a dangerous wild animal;

(2) He or she shall notify the sheriff or humane officer in his or her county immediately if the dangerous wild animal escapes;

(3) He or she may not allow the dangerous wild animal to come into physical contact with a person other than the permittee, the animal’s designated handler, an employee of a law-enforcement agency enforcing this article or a veterinarian administering medical treatment or care;

(4) He or she has not been convicted for an offense involving the abuse or neglect of any animal;

(5) He or she has not had a permit or license concerning the care, possession, exhibition, breeding or sale of a dangerous wild animal revoked or suspended by a governmental agency;

(6) He or she shall permanently mark each dangerous wild animal with a unique identifier;
(7) He or she shall maintain records for each dangerous wild animal, including veterinary records, acquisition papers, the purchase date and other records that prove ownership of the dangerous wild animal;

(8) He or she presents proof of liability insurance in an amount of not less than $300,000 with a deductible of not more than $250 for each occurrence of property damage, bodily injury or death caused by a dangerous wild animal possessed by the person;

(9) He or she shall notify the board not less than three days before a dangerous wild animal is transferred to another person out of state;

(10) He or she may not transfer dangerous wild animals in the state without the written consent of the board;

(11) He or she shall notify the board of any plans to move or change his or her address, and may not move the animal without the written consent of the board. However, in the event of a medical emergency, a dangerous wild animal may be transported to a licensed veterinarian’s facility for treatment and care if the animal is at all times confined sufficiently to prevent escape; and

(12) He or she shall comply with all rules promulgated by the board pursuant to the provisions of this article.

(c) The board may issue a permit to possess a dangerous wild animal if it determines that the applicant has met the requirements of this article.

(d) The board shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

(e) A permit to possess a dangerous wild animal is valid for one calendar year and must be renewed annually.
ARTICLE 35. FARMERS MARKETS.

§19-35-3. Farmers market vendor permit; scope.

(a) Vendors at a farmers market selling farm and food products that require a food establishment permit shall apply for a uniform farmers market vendor permit and pay the annual permit fee to the local health department in the jurisdiction in which the farmers market is located. The permit is valid in all counties in this state, and vendors are not required to apply to more than one local health department for a uniform farmers market vendor permit. The uniform farmers market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department: Provided, That the department shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

(b) The application must include any other farmers market locations under the jurisdiction of another local health department that the vendor will sell farm and food products subject to the permit. The local health department which approves the application for the uniform farmers market vendor permit shall provide notice of the approval to any other local health departments that the vendor will be subject to, as indicated on the application.

(c) (1) The annual permit fee for the uniform farmers market vendor permit is as follows:

(A) For vendors selling farm and food products under the jurisdiction of only one local health department, the annual fee is $15.

(B) For vendors selling farm and food products under the jurisdiction of more than one local health department, the annual fee is $25.
(2) The annual permit fee shall be collected and deposited in accordance with subsection (6), section eleven, article two, chapter sixteen of this code.

(d) The following vendors are exempt from the requirements of the uniform farmers market vendor permit:

(1) Vendors delivering their products to a consignment farmers market; or

(2) Vendors selling fresh, uncut produce or other any other farm and food product not subject to a permit by a local health department through rule or regulation.

(e) A consignment farmers market shall obtain a food establishment permit issued by the local health department.

(f) Every uniform farmers market vendor permit shall be displayed in a conspicuous manner.

(g) Notwithstanding the provisions of article two, chapter sixteen of this code, a local health department has the right to inspect and suspend the uniform farmers market vendor permit for violation of rules or the local health department regulations of a vendor at any farmers market in its jurisdiction, or at the vendor’s home or business address, if it is in the inspecting local health department’s jurisdiction, regardless of what local health department issued the uniform farmers market vendor permit.

(h) Nothing in this article eliminates or limits other state and federal rules and regulations that apply to certain farm and food products sold at a farmers market or a consignment 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.
(a) *Forest fire seasons.* — March 1 through May 31, and
October 1 through December 31 are designated as forest fire
seasons. During any fire season, a person may set on fire or
cause to be set on fire any forest land, or any grass, grain,
stubble, slash, debris, or other inflammable materials only
between five o’clock p.m. and seven o’clock a.m., at which
time the fire must be extinguished.

(b) *Permissible fires during forest fire seasons.* — The
following attended fires are permitted without a burning
permit unless there is a burning ban in effect:

(1) Small fires set for the purpose of food preparation,
or providing light or warmth around which all grass, brush,
stubble, or other debris has been removed for a distance of
ten feet from the fire; and

(2) Burning conducted at any time when the ground
surrounding the burning site is covered by one inch or more
of snow.

(c) *Burning permits.* — The director or his or her
designee may issue burning permits authorizing fires during
forest fire seasons that are otherwise prohibited by this
section. The permits shall state the requisite conditions and
time frame to prevent danger from the fire to life or
property: *Provided,* That the director or his or her designee
shall take final action upon all completed permit
applications within thirty days of receipt if the application
is uncontested, or within ninety days if the application is
contested.

(1) *Permit fees.* — Entities required to pay a permit fee
are those engaged in commercial, manufacturing, public
utility, mining and like activities. Agricultural activities are
exempt from paying the permit fee. The permit fee is $125
per site and shall be deposited into the Division of Forestry
Fund (3081) to be used to administer the provisions of this
section. The permit fee covers the fire season during which
it is issued.
(2) Noncompliance with any condition of the permit is a violation of this section. Any permit which was obtained through willful misrepresentation is invalid and violates this section.

(3) Permit holders shall take all necessary and adequate precautions to confine and control fires authorized by the permit. Failure to take action is a violation of this section and is justification for the director to revoke the permit.

(d) Fire control. —

(1) With approval of the Governor, the director may prohibit the starting of and require the extinguishment of fire in any designated area, including fires permitted by this section.

(2) With approval of the Governor, the director may designate any forest area as a danger area, prohibit entry, and declare conditional uses and prohibited areas of the forest by proclamation at any time of the year. The proclamation shall be furnished to newspapers, radio stations and television stations that serve the designated area and shall become effective after twenty-four hours. The proclamation remains in effect until the director, with the approval of the Governor, terminates it. The order shall designate the time of termination, and notice of the order shall be furnished to each newspaper, radio station and television station that received a copy of the proclamation.

(3) Burning is not permitted by this section until all inflammable material has been removed from around the material to be burned and a safety strip of at least ten feet is established to ensure that the fire will not escape.

(e) Criminal and civil penalties. — A person or entity that violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 and not more than $1,000 for each violation. In addition to fines and costs, a person or entity convicted of a violation of this
section shall pay a $200 civil penalty to the division within sixty days. The civil penalty shall be collected by the court in which the person is convicted and forwarded to the division and deposited in the Division of Forestry Fund (3081) to be used to administer the provisions of this section.

ARTICLE 7A. CAVE PROTECTION.

§20-7A-5. Archaeology; permits for excavation; how obtained; prohibitions; penalties.

(a) No person may excavate, remove, destroy, injure or deface any historic or prehistoric ruins, burial grounds, archaeological or paleontological site including saltpeter workings, relics or inscriptions, fossilized footprints, bones or any other such features which may be found in any cave.

(b) Notwithstanding the provisions of subsection (a) of this section, a permit to excavate or remove archaeological, paleontological, prehistoric and historic features may be obtained from the director of natural resources. Such permit shall be issued for a period of two years and may be renewed at expiration. It is not transferable but this does not preclude persons from working under the direct supervision of the person holding the permit: Provided, That the director shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

A person applying for such a permit must:

(1) Provide a detailed statement to the director of natural resources giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work.

(2) Provide data and results of any completed excavation, study or collection at the first of each calendar year.
(3) Obtain the prior written permission of the director of
natural resources if the site of the proposed excavation is on
state-owned lands and prior written permission of the owner
if the site of such proposed excavation is on privately owned
land.

(4) Carry the permit while exercising the privileges
granted.

A person who violates any provision of subsection (a)
of this section shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than $100 nor
more than $500, and may be imprisoned in the county jail
for not less than ten days nor more than six months. A
person who violates any of the provisions of subsection (b)
of this section shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than $100 nor
more than $500, and the permit herein authorized shall be
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.

If, after inspection, an amusement ride or amusement
attraction is found to comply with the rules of the division,
the division shall issue a permit to operate. The permit shall
be in the form of a certificate of inspection and shall be kept
in the records of any operator or owner for a three-year
period and shall be readily accessible to the public for
inspection at any reasonable time at the carnival, fair or
event where the amusement ride or attraction is located. A
copy of the certificate, showing the last date of inspection,
shall be affixed to the amusement ride or amusement
attraction upon issuance: Provided, That the division shall
take final action upon all completed permit applications
within thirty days of receipt if the application is
uncontested, or within ninety days if the application is contested.

ARTICLE 12. COMMERCIAL BUNGEE JUMPING SAFETY ACT.

§21-12-7. Issuance of permit; certificate of inspection; availability to public.

If, after inspection, a commercial bungee jumping site, together with the jump platform and equipment, is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator or owner for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the commercial bungee jumping site or where a commercial bungee jump is located. A copy of certificate, showing the last date of inspection, shall be affixed to the bungee jumping platform upon issuance, or at any other location designated by the commissioner of the Division of Labor: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or 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.

If, after inspection, a zipline or canopy tour, is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the zipline location. A copy of the certificate, showing the last date of inspection, shall be affixed to the zipline upon issuance, or at any other location designated by the
commissioner of the division: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 3. CONTRACT CARRIERS BY MOTOR VEHICLES.

§24A-3-3. Permit.

(a) Required; application; hearing; granting. — It shall be unlawful for any contract carrier by motor vehicle to operate within this state without first having obtained from the commission a permit. Upon the filing of an application for such permit, the commission shall fix a time and place for hearing thereon: Provided, That the commission may, after giving notice as hereinafter provided and if no protest is received, waive formal hearing on such application. Said notice shall be by publication which shall state that formal hearing may be waived in the absence of protest to such application. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the area of operation. Such notice shall be published at least ten days prior to the date of hearing, but not more than thirty days after the filing of the completed application. After hearing or waiver of hearing as aforesaid, as the case may be, the commission shall grant or deny the permit prayed for or grant it for the partial exercise only of the privilege sought, and may attach to the exercise of the privilege granted by such permit such terms and conditions as in its judgment are proper and will carry out the purposes of this chapter. No permit shall be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public or unduly interfere with the use of the highways or impair unduly the condition or unduly increase the maintenance cost of such highways,
directly or indirectly, or impair the efficient public service
of any authorized common carrier or common carriers
adequately serving the same territory.

(b) Rules and regulations; evidence at hearing. — The
commission shall prescribe such rules and regulations as it
may deem proper for the enforcement of the provisions of
this section and may designate any of its employees to take
evidence at the hearing on any application for a permit and
submit findings of fact as a part of report or reports to be
made to the commission.

(c) Permit not franchise, etc.; assignment or transfer. —
No permit issued in accordance with the terms of this
chapter shall be construed to be either a franchise or
irrevocable or to confer any proprietary or property rights in
the use of the public highways. No permit issued under this
chapter shall be assigned or otherwise transferred without
the approval of the commission. Upon the death of a person
holding a permit, his or her personal representative or
representatives may operate under such permit while the
same remains in force and effect and, with the consent of
the commission, may transfer such permit.

(d) Suspension, revocation or amendment. — The
commission may at any time, for good cause, suspend and,
upon not less than fifteen days’ notice to the grantee of any
permit and an opportunity to be heard, revoke or amend any
permit.

(e) Notice of cessation or abandonment. — Every
contract carrier by motor vehicle who shall cease operation
or abandon his or her rights under a permit issued shall
notify the commission within thirty days of such cessation
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.

(a) Enforcement of laws. — The State Fire Marshal and any other person authorized to enforce the provisions of this article under the supervision and direction of the State Fire Marshal has the authority to enforce all laws of the state having to do with:

1. Prevention of fire;
2. The storage, sale and use of any explosive, combustible or other dangerous article or articles in solid, flammable liquid or gas form;
3. The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires;
4. The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;
5. The suppression of arson; and
6. Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed or used in direct violation of the State Fire Code.

(b) Assistance upon request. — Upon request, the State Fire Marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, state police officer, natural resources police officer or any county or municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal or assistant state fire marshal employed pursuant to section eleven of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer’s
official duties: Provided, That the State Fire Marshal or other person authorized to act under this subsection shall at all times work under the direct supervision of the requesting officer.

(c) Enforcement of rules. — The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article.

(d) Inspections generally. — The State Fire Marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the State Fire Code and this article, including, but not limited to, state, county and municipally owned institutions, all public and private schools, health care facilities, theaters, churches and other places of public assembly to determine whether the structures or facilities are in compliance with the State Fire Code.

(e) Right of entry. — The State Fire Marshal may, at all reasonable hours, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The State Fire Marshal and any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal may enter upon any property, or enter any building, structure or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the State Fire Marshal pursuant to subdivision (1), subsection (a), section twelve-b of this article or of article three-b of this chapter.

(f) Investigations. — The State Fire Marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The State Fire Marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate
where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of the investigation, the State Fire Marshal shall obtain a proper search warrant: \textit{Provided,} That a search warrant is not necessary where there is permissive waiver or the State Fire Marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

(g) \textit{Testimony.} — The State Fire Marshal, in making an inspection or investigation when in his or her judgment the proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or testimony reduced to writing; and shall transmit a copy of the statements or testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person may be compelled to testify or give any statement under this subsection.

(h) \textit{Arrests; warrants.} — The State Fire Marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to section eleven of this article is hereby authorized and empowered and any person deputized pursuant to subsection (j) of this section may be authorized and empowered by the State Fire Marshal:

(1) To arrest any person anywhere within the confines of the State of West Virginia, or have him or her arrested, for any violation of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter: \textit{Provided,} That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court.
(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article, of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over the violation.

(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article, of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all search warrants before the tribunal having jurisdiction over the violation.

(i) Witnesses and oaths. — The State Fire Marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him or her to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the State Fire Marshal and cause to be produced before him or her such papers as he or she may require in making the examination. The State Fire Marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him or her. False swearing in any matter or proceeding aforesaid is considered perjury and is punishable as perjury.

(j) Deputizing members of fire departments in this state. — The State Fire Marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his or her department and who is properly qualified to act as his or her assistant for the purpose of making inspections with the consent of the property owner or the person in control of the property and
the investigations as may be directed by the State Fire
Marshal, and the carrying out of orders as may be prescribed
by him or her, to enforce and make effective the provisions
of this article and any and all rules promulgated by the State
Fire Commission under authority of this article: Provided,
That in the case of a volunteer fire department, only the
chief thereof or his or her single designated assistant may be
so deputized.

(k) Written report of examinations. — The State Fire
Marshal shall, at the request of the county commission of
any county or the municipal authorities of any incorporated
municipality in this state, make to them a written report of
the examination made by him or her regarding any fire
happening within their respective jurisdictions.

(l) Report of losses by insurance companies. — It is the
duty of each fire insurance company or association doing
business in this state, within ten days after the adjustment of
any loss sustained by it that exceeds $1,500, to report to the
State Fire Marshal information regarding the amount of
insurance, the value of the property insured and the amount
of claim as adjusted. This report is in addition to any
information required by the State Insurance Commissioner.
Upon the request of the owner or insurer of any property
destroyed or injured by fire or explosion, or in which an
attempt to cause a fire or explosion may have occurred, the
State Fire Marshal shall report in writing to the owner or
insurer the result of the examination regarding the property.

(m) Issuance of permits and licenses. — The State Fire
Marshal is authorized to issue permits, documents and
licenses in accordance with the provisions of this article or
of article three-b of this chapter: Provided, That unless
otherwise provided, the State Fire Marshall shall take final
action upon any completed permit applications within thirty
days of receipt if the application is uncontested, or within
ninety days if the application is contested. The State Fire
Marshal may require any person who applies for a permit to
use explosives, other than an applicant for a license to be a
pyrotechnic operator under section twenty-four of this article, to be fingerprinted and to authorize the State Fire Marshal to conduct a criminal records check through the criminal identification bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

(n) Issuance of citations for fire and life safety violations. — The State Fire Marshal, any deputy fire marshal and any assistant fire marshal employed pursuant to section eleven of this article are hereby authorized, and any person deputized pursuant to subsection (j) of this section may be authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of the State Fire Code and as provided for by the rules promulgated by the State Fire Commission in accordance with article three, chapter twenty-nine-a of this code: Provided, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the State Fire Marshal in the form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation and the person to whom the citation was issued. The State Fire Marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the State Fire Marshal, the exercise of authority by the person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

(1) Overcrowding places of public assembly;

(2) Locked or blocked exits in public areas;

(3) Failure to abate a fire hazard;
(4) Blocking of fire lanes or fire department connections; and

(5) Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment and fire alarm systems.

(o) Required training; liability coverage. — No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the Law-enforcement Training Subcommittee of the Governor’s Committee on Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of the person has been provided, in the case of a paid municipal fire department by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the State Fire Marshal.

(p) Penalties for violations. — Any person who violates any fire and life safety rule of the State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in jail not more than ninety days, or both fined and confined.

Each and every day during which any violation of the provisions of this article continues after knowledge or 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.
Notwithstanding any other provision of this code, any individual rendering services in this state in connection with any event or program offered by the nonprofit youth organization is exempt from obtaining an authorization to practice from the appropriate licensing agency of this state while providing services within the limits of his or her authorization to practice, but is required to obtain a nonprofit volunteer permit.

The nonprofit youth organization may issue a nonprofit volunteer permit to an applicant, who is a registered volunteer of the nonprofit youth organization serving as a volunteer, without compensation, in connection with any event or program offered by the organization, if:

1. All authorizations held by the medical services applicant are valid, unrestricted without limitation or condition and in good standing: Provided, That any medical services applicant issued a permit pursuant to this article shall:
   1. Not have prescriptive authority;
   2. Not dispense a Schedule II or Schedule III controlled substance, but may dispense pharmaceutical drugs in a manner consistent with the applicant’s training and experience; and
   3. At all times be subject to the direction of nonprofit volunteer organization medical director.

2. All authorizations held by the law-enforcement applicant are valid, unrestricted without limitation or condition and in good standing and the applicant is deputized by the Superintendent of the West Virginia State Police pursuant to subsection (e), section twelve, article two, chapter fifteen of this code prior to rendering any law-enforcement services: Provided, That:

   1. Any permit issued pursuant to this article shall not supersede the authority or duty of a law-enforcement officer certified pursuant to article twenty-nine, chapter thirty of this code to preserve law and order on the premises;
(B) The Superintendent of the West Virginia State Police has sole discretion in determining whether to deputize any law-enforcement applicant; and

(C) The jurisdiction for a law-enforcement applicant issued a permit pursuant to the provisions of this article shall be limited to:

(i) The property owned by the nonprofit youth organization;

(ii) Any street, road or thoroughfare, except controlled access and open country highways, immediately adjacent to or passing through the property owned by the nonprofit youth organization; and

(iii) Areas of operations in support of an event sponsored by the nonprofit youth organization.

(D) A law-enforcement applicant issued a permit pursuant to the provisions of this article shall at all times be subject to the direction of the Superintendent of the West Virginia State Police.

(3) All authorizations held by the emergency medical service applicant are valid, unrestricted without limitation or condition and in good standing: Provided, That any emergency medical service applicant issued a permit pursuant to this article shall:

(A) Not have prescriptive authority;

(B) Not dispense a Schedule II or Schedule III controlled substance, but may dispense pharmaceutical drugs in a manner consistent with the applicant’s training and experience; and

(C) At all times be subject to the direction of nonprofit volunteer organization medical director.

(c) Any services rendered by a permittee shall at all times be performed under the guidelines and instructions of the nonprofit volunteer organization.
(d) A nonprofit volunteer permit issued pursuant to the provisions of this article may only be valid for a period not to exceed ninety days in a calendar year.

(e) Unless otherwise provided, the nonprofit youth organization shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the 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.

(a) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. The commissioner shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. Such permit shall expire one year from date of issue.

(b) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner.

*NOTE: This section was also amended by S. B. 419 (Chapter 135), which passed subsequent to this act.
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.

(a) The West Virginia Anatomical Board, previously created herein, is hereby reestablished under the authority of the Higher Education Policy Commission and shall consist of the following four members, or their designee:

(1) The Dean of the Marshall University School of Medicine;

(2) The Dean of the West Virginia University School of Medicine;

(3) The Dean of the West Virginia University School of Dentistry; and

(4) The Dean of the West Virginia School of Osteopathic Medicine.

(b) For purposes of this section:

(1) “Board” means the West Virginia Anatomical Board; and

(2) “Commission” means the West Virginia Higher Education Policy Commission.

(c) The responsibilities of the board shall include:

(1) Making requisition for, receiving and making disposition of dead human bodies for the scientific and educational uses and purposes of higher education institutions within the state and elsewhere; and

(2) Keeping a full and complete record of its transactions, showing, among other things, every dead 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.


Notwithstanding any provision of law to the contrary or any rule promulgated under the provisions of this code, the Division of Corrections may hire any person listed on the Correctional Officer I Register for employment as a Correctional Officer I without regard to the person’s position on said register: Provided, That no person on the Correctional Officer I Register may be offered employment or hired before an otherwise qualified person on a 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.

The State Boxing Commission, heretofore created, is hereby continued and renamed the State Athletic Commission. The commission shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner or physicians’ assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay. At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. If there is a vacancy in the board, the vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure. Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall, at the first meeting after their appointment, elect one of their number chairman of the commission and another of their number secretary of the commission, shall adopt a seal for the commission and shall make such rules for the administration of their office, not inconsistent herewith, as they may consider expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least three commissioners is necessary to
render a choice or decision of the commission except that, notwithstanding the requirements of the Open Governmental Proceedings Act, West Virginia Code § 6-9a-1 et seq., a quorum of the commission may vote in writing to approve changes to the roster of participants or the roster of officials if the need for the substitution(s) is made known to the commission within forty-eight hours of an event that the commission previously approved: Provided, That the substitution(s) is necessary to effectuate the match: Provided, however, That the written decision of the commission is presented at the next scheduled meeting of the commission and recorded in its minutes.

§29-5A-6. Payment of official in charge.

The deputy, inspector or other officials designated by the commission to be in charge of a boxing or mixed martial arts event shall be paid by the promoter at a minimum rate of $75 per day for services performed prior to any event at a weigh-in and each day of an event: Provided, That not more than one official designated by the commission to be in charge of a boxing or mixed martial arts event may receive compensation for services performed. If a weigh-in occurs within three hours before the boxing bouts are scheduled to begin, the deputy, inspector or other officials will be paid only one rate at a minimum of $75 for that particular night or day’s events. Judges, timekeepers, scorekeepers and inspectors shall be paid by the promoter at a minimum rate of $50 per day for services performed prior to any event and each day of an event. Referees shall be paid by the promoter at a minimum rate of $75 per day of bouts. Payments to the officials in charge, judges, timekeepers, scorekeepers, inspectors or referees exceeding the amounts under this section are prohibited without prior written consent of the promoter: Provided, however, That the commission may revise any fees paid to officials through legislative rule-making process beginning June 30, 2018, and every three years thereafter. The commission may not revoke an event permit or license for refusal to pay a fee greater than the fees in this section: Provided further, That approved officials are available, willing
§29-5A-15. Reports by clubs to commission; bonds of applicants for license.

1 Every club, corporation, association or individual which may hold or exercise any of the privileges conferred by this article shall, within four business days after the determination of any contest, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such contest and the amount of the gross proceeds thereof, and such other matters as the commission may prescribe. Before any license shall be granted to any club, corporation, association or individual to conduct, hold or give any boxing, sparring or exhibition, such applicant therefor shall execute and file with the commission a surety bond in the sum of which shall be at the discretion of said commission, to be approved as to form and the sufficiency of the security thereon by the said commission. Such bond shall cover all purses, awards and 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 privilege of being present at all exhibitions and matches without charge therefor, and shall, when present, see that the rules are strictly observed, and may be present at the counting of the gross receipts. The commission may appoint an inspector to be present representing said commission, which inspector shall have the same privilege hereby conferred upon a member of the commission; and said inspector shall immediately mail to the commission the official box office statement received by him or her from the officers of the club.
§29-5A-20. Licenses for contestants, referees and managers.

No contestant, trainer, inspector, referee or professional manager may take part in any boxing contest or exhibition unless holding a license from the state that is issued by the commission upon payment of the following annual license fee schedule: Professional contestant $25; amateur contestant $20; trainer $20; inspector $30; referee $30; and professional manager $50. Semiprofessional contestants shall pay a license fee of $10 for each event. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the Treasurer of the State of West Virginia to be deposited in the State Athletic Commission Fund. If a license is not granted, the Treasurer shall refund the full amount.


(a) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) The commission shall propose such rules to regulate professional and semiprofessional boxers, professional or amateur mixed martial artists, professional and semiprofessional boxing matches and exhibitions and professional or amateur mixed martial arts matches and exhibitions: Provided, That for professional boxers and boxing matches and exhibitions, the commission rules shall comply with the current unified rules of boxing as adopted by the Association of Boxing Commissions; for professional mixed martial artists and mixed martial arts matches and exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions; for amateur boxers and boxing matches or exhibitions, the commission rules shall comply with the amateur rules for boxing as adopted by the United States Amateur Boxing Authority; and for amateur mixed martial artists and mixed martial arts matches or exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as recommended and/or adopted by the Association of Boxing Commissions. For full contact boxing...
and other boxing events that follow nontraditional rules, rules
guaranteeing the safety of the participants and the fair and
honest conducting of the matches or exhibitions are
authorized.

c) The commission shall propose separate rules for
amateur boxers and amateur boxing, sparring matches and
exhibitions as follows:

Rules which comply with the requirements of the rules of
the current United States Amateur Boxing Authority to the
extent that any boxer complying with them will be eligible to
participate in any state, national or international boxing match
sanctioned by the current United States Amateur Boxing
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.

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

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

(c) No licensed limited video lottery retailer may be authorized to have on the premises for which the license was issued more than seven video lottery terminals except that a fraternal society or veterans’ organization that is: (A) A fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended; (B) a domestic fraternal society that is exempt from federal income tax under section 501(c)(10); or (C) a veterans’ organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code may be authorized to have on the premises for which the license was issued not more than ten video lottery terminals.

(d) Pursuant to the increase of the number of video lottery terminals authorized in subsection c of this section, effective 2017, the commission shall conduct a bidding process no later than September 1, 2017, for permits for additional terminals. Any permits for which a successful
bid is made shall expire June 30, 2021. The bidding process is open to current permit holders only and which shall be conducted in accordance with sections one thousand one hundred six, one thousand one hundred seven and one thousand one hundred nine of this article.

PART 12. PLACEMENT AND TRANSPORTATION OF VIDEO LOTTERY TERMINALS.


(a) Video lottery terminals allowed by this article may be placed only in licensed limited video lottery locations approved by the commission: Provided, That prior to the approval of the placement of a video lottery terminal operated pursuant to a permit issued after December 31, 2017, the commission shall hold one or more public hearings at which interested persons may express their views on the proposed video lottery locations pursuant to subsection (b) of this section.

(b) Public Hearing.

(1) Notice of public hearing. – Notice of the public hearing or hearings shall be published as a Class II legal advertisement at the expense of the permittee, in a form acceptable to the commission, and accordance with the requirements of article three, chapter fifty-nine of this code. The published notice shall include, at a minimum:

(A) The date, time, place and purpose of the public hearing or hearings; and

(B) The proposed location of a video lottery terminal.

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

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

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

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

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

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

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

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

(g) Notwithstanding any other provision of this article to the contrary, during any bidding pursuant to section 1107 of this article occurring after June 30, 2021, the commission
shall reduce the number of licensed limited video lottery locations to a number less than one thousand two hundred 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.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination
was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) On or before January 1, of each year in which the Legislature meets in regular session, the board shall submit the Governor and to the Legislature a report of its activities for the preceding two years, containing the following information for that period:

1. The total receipts and disbursements for each year;
2. A list of amounts received in each year for the following categories of receipts:
   A. License applications, registrations and renewals;
   B. Examination fees, if applicable;
   C. Other fees, including late fees, copying charges and fees for printed certificates;
   D. Fines or penalties;
   E. Expense reimbursements from disciplinary actions; and
   F. Grants, special appropriations or other sources of revenue not from fees;
3. A list of amounts spent in each year for the following categories of expenditures:
   A. Personal services;
   B. Board member per diem compensation;
(C) Travel expenses and automobile mileage;

(D) Professional contracts;

(E) Rent;

(F) Office supplies;

(G) Postage;

(H) Entertainment and hosting;

(I) Insurance; and

(J) Bank costs;

(4) A complete list of the names of all persons newly licensed or registered;

(5) A table or list showing numbers of licensees or registrants by West Virginia county of practice or, for out-of-state licensees or registrants, by state of residence, and by specialty, if appropriate to the particular profession;

(6) Complaints filed and investigations opened by the board, with a brief classification of the nature of the complaint, together with the dates of compliance with the time requirements of subsection (c), section five of this article, and the disposition, if any;

(7) In addition to complaints reported under the preceding subsection, complaints resolved and investigations closed by the board, with a brief classification of the nature of the complaint, together with the dates of compliance with the time requirements of subsection (c), section five of this article, and the disposition, if any; and

(8) Copies of the agendas for, and minutes of, board and committee or subcommittee meetings.

The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the Secretary of State and with the legislative librarian.
(c) To promote public access, the secretary of every board shall ensure that the address and telephone number of the board are included every year in the state government listings of the Charleston area telephone directory. Every board shall regularly evaluate the feasibility of adopting additional methods of providing public access, including, but not limited to, listings in additional telephone directories, toll-free telephone numbers, facsimile and 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 approval, in accordance with article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:
(1) Standards and requirements for licenses and permits;
(2) Procedures for examinations and reexaminations;
(3) Requirements for third parties to prepare or administer, or both, examinations and reexaminations;
(4) Educational and experience requirements;
(5) Standards for approval of courses and curriculum;
(6) Procedures for the issuance and renewal of licenses and permits;
(7) A fee schedule;
(8) Regulation of osteopathic medical corporations;
(9) Regulation of profession limited liability companies;
(10) Regulation of osteopathic physician assistants;
(11) Continuing education requirements for licensees;
(12) The standards for and limitations upon the utilization of telemedicine technologies;
(13) The procedures for denying, suspending, restricting, revoking, reinstating or limiting the practice of licensees and permittees;
(14) Adopting a standard for ethics;
(15) Requirements for revoked licenses or permits; and
(16) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board's rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.
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 Development Council is continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are determined to be, essential governmental functions and for a public purpose.

8 (b) The council shall consist of thirteen members, including:

10 (1) The Governor or designee;
(2) The Executive Director of the Housing Development Fund or his or her designee;

(3) The Director of the Division of Environmental Protection or his or her designee;

(4) The Director of the Economic Development Authority or his or her designee;

(5) The Director of the Water Development Authority or his or her designee;

(6) The Director of the Division of Health or his or her designee;

(7) The Chairman of the Public Service Commission or his or her designee; and

(8) Six members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district. No more than one member representing the general public may be a resident of the same county.

(c) The Governor shall appoint the public members of the council who shall serve three-year staggered terms.

(d) The Commissioner of the Division of Highways, the Executive Director of the State Rail Authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the Chancellor of the Higher Education Policy Commission and the Chancellor of the West Virginia Council for Community and Technical College Education serve as advisory members of the council. The advisory members shall be ex officio, nonvoting members of the council.

(e) The Governor shall appoint the legislative members of the council: Provided, That no more than three of the legislative members may be of the same political party.
(f) The Governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Seven members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(g) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the council in a manner consistent with guidelines of the travel management office of the Department of Administration.

(h) The council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the Economic Development Authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The Governor’s Civil Contingent Fund is not subject to council review with regard to projects or infrastructure projects funded through the Governor’s Civil Contingent Fund.

(i) The Water Development Authority shall provide office space for the council and each governmental agency represented on the council shall provide staff support for the council in the manner determined appropriate by the council.
(j) The council shall invite to each meeting one or more representatives of the United States Department of Agriculture, Rural Economic Community Development, the United States Economic Development Agency and the United States Army Corps of Engineers or any successors thereto. The council shall invite other appropriate parties as 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.

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent’s address, the Secretary of State is an agent of the company upon whom process, notice or demand may be served.

(c) Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State, the assistant Secretary of State or clerk having charge of the limited liability company department of the Secretary of State, the original process, notice or demand and two copies thereof for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. No process, notice or demand may be served on or accepted by the Secretary of State less than ten days before the return day thereof. The Secretary of State, upon being
served with or accepting any process, notice or demand, shall: (1) File in his or her office a copy of the process, notice or demand, endorsed as of the time of service or acceptance; and (2) transmit one copy of the process, notice or demand by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to the limited liability company’s registered agent: Provided, That if there is no registered agent, then to the individual whose name and address was last given to the Secretary of State’s office as the person designated to receive process, notice or demand. If no person has been named, then to the principal office of the limited liability company at the address last given to the Secretary of State’s office and if no address is available on record with the Secretary of State then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk’s office of the court from which the process, notice or demand was issued. Such service or acceptance of process, notice or demand is sufficient if the return receipt is signed by an agent or employee of such company, or the registered or certified mail so sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, showing the stamp of the United States Postal Service that delivery thereof has been refused, and such return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the
stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. No process, notice or demand may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) The Secretary of State shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-504. Service on corporation.

(a) A corporation’s registered agent is the corporation’s agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:
(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) In addition to the methods of service on a corporation provided in subsections (a) and (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on behalf of each corporation created pursuant to the provisions of this chapter. The Secretary of State has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the Secretary of State as attorney-in-fact is necessary. Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State the original process, notice or demand and two copies of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code: Provided, That with regard to a class action suit in which all defendants are to be served with the same process, notice or demand, service may be made by filing with the Secretary of State the original process, notice or demand and one copy for each named defendant. Immediately after being served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service or acceptance; (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to: (A) The corporation’s registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the Secretary of State’s office as the person
to whom notice and process are to be sent and if no person
has been named, to the principal office of the corporation as
that address was last given to the Secretary of State’s office.
If no address is available on record with the Secretary of
State, then to the address provided on the original process,
notice or demand, if available; and (3) transmit the original
process, notice or demand to the clerk’s office of the court
from which the process, notice or demand was issued.
Service or acceptance of process or notice is sufficient if
return receipt is signed by an agent or employee of the
corporation, or the registered or certified mail sent by the
Secretary of State is refused by the addressee and the
registered or certified mail is returned to the Secretary of
State, or to his or her office, showing the stamp of the United
States Postal Service that delivery has been refused, and the
return receipt or registered or certified mail is received by
the Secretary of State by a means which may include
electronic issuance and acceptance of electronic return
receipts. After receiving verification from the United States
Postal Service that acceptance of process, notice or demand
has been signed, the Secretary of State shall notify the
clerk’s office of the court from which the process, notice or
demand was issued by a means which may include
electronic notification. If the process, notice or demand was
refused or undeliverable by the United States Postal Service
the Secretary of State shall create a preservation duplicate
from which a reproduction of the stored record may be
retrieved which truly and accurately depicts the image of the
original record. The Secretary of State may destroy or
otherwise dispose of the original returned or undeliverable
mail. Written notice of the action by the Secretary of State
must then be provided by certified mail, return receipt
requested, facsimile, or by electronic mail, to the clerk’s
office of the court from which the process, notice or demand
was issued. No process or notice may be served on the
Secretary of State or accepted by him or her less than ten
days before the return day of the process or notice. The court
may order continuances as may be reasonable to afford each
defendant opportunity to defend the action or proceedings.
(d) This section does not prescribe the only means, or 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.

(a) A corporation’s registered agent is the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

1. The date the corporation receives the mail;
2. The date shown on the return receipt, if signed on behalf of the corporation; or
3. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) In addition to the methods of service on a corporation provided in subsections (a) and (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on behalf of each corporation created pursuant to the provisions of this chapter. The Secretary of State has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the Secretary of State as attorney-in-fact is necessary. Service
of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State the original process, notice or demand and two copies of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. Immediately after being served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service, or acceptance; (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to: (A) The corporation’s registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the Secretary of State’s office as the person to whom notice and process are to be sent, and if no person has been named, to the principal office of the corporation as that address was last given to the Secretary of State’s office; and if no address is available on record with the Secretary of State, then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk’s office of the court from which the process, notice or demand was issued. Service or acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing the stamp of the United States Postal Service that delivery has been refused, and the return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include
electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) This section does not prescribe the only means, or 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.

The Secretary of State is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing
the Secretary of State such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law, or if no address is available on record with the Secretary of State then to the address provided on the original process or process, if available. No process or notice shall be served on the Secretary of State or accepted by him less than ten days before the return day thereof. Such limited partnership shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the Secretary of State as its attorney-in-fact.

Any foreign limited partnership which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with authority to accept service of notice and process on behalf of such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership in any action or proceeding described in the next following paragraph of this section. No act of such limited partnership appointing the Secretary of State as such
attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to such limited partnership at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such limited partnership. After receiving verification from the United States Postal Service that acceptance of process or notice has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process or notice was issued by a means which may include electronic notification. If the process or notice was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. No process or notice shall be served on the Secretary of State or accepted by him or her less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.
For the purpose of this section, a foreign limited partnership not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein: (a) If such limited partnership makes a contract to be performed, in whole or in part, by any party thereto in this state; (b) if such limited partnership commits a tort, in whole or in part, in this state; or (c) if such limited partnership manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such limited partnership had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as herein above described shall be deemed to be the agreement of such limited partnership that any notice or process served upon, or accepted by, the Secretary of State pursuant to the next preceding paragraph of this section in any action or proceeding against such limited partnership arising from or growing out of such contract, tort or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as 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.

(a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road or highway of this state, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his
or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state arising out of any accident or collision occurring in the State of West Virginia in which the nonresident was involved: Provided, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident motorist shall be considered to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of automobile or liability insurance with the nonresident defendant.

(b) For purposes of service of process as provided in this section, every insurance company shall be considered the agent or attorney-in-fact of every nonresident motorist insured by that company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as provided in this section, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident operating a motor vehicle in this state, either personally or through an agent, is considered to acknowledge the appointment of the Secretary of State, or, as the case may be, his or her automobile insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is considered to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner provided in this section, shall be of the same legal force and validity as though the nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.
Any action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of any nonresident who dies during or subsequent to an accident or collision resulting from the operation of a motor vehicle in this state by the nonresident or his or her duly authorized agent.

(d) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the summons and complaint, together with the bond certificate of the clerk, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and the service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix, executor or executrix: Provided, That notice of service and a copy of the summons and complaint shall be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the nonresident defendant. After receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. The court may order any reasonable continuances to afford the defendant opportunity to defend the action.
(e) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the proceeding. The Secretary of State shall keep a record in his or her office of all service of process and the day and hour of service of process.

(f) In the event service of process upon a nonresident defendant cannot be effected through the Secretary of State as provided by this section, service may be made upon the defendant’s insurance company. The plaintiff shall file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the Secretary of State was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the Secretary of State showing the stamp of the post office department that delivery was refused or that the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (d) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(g) The following words and phrases, when used in this article, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

1. “Duly authorized agent” means and includes, among others, a person who operates a motor vehicle in this state for a nonresident as defined in this section and chapter, in pursuit of business, pleasure or otherwise, or who comes into this state and operates a motor vehicle for, or with the knowledge or acquiescence of, a nonresident; and includes, among others, a member of the family of the nonresident or a person who, at the residence, place of business or post office of the nonresident, usually receives and acknowledges receipt for mail addressed to the nonresident.
(2) “Motor vehicle” means and includes any self-propelled vehicle, including a motorcycle, tractor and trailer, not operated exclusively upon stationary tracks.

(3) “Nonresident” means any person who is not a resident of this state or a resident who has moved from the state subsequent to an accident or collision and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to an accident or collision.

(4) “Nonresident plaintiff or plaintiffs” means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) “Nonresident defendant or defendants” means a nonresident motorist who, either personally or through his or her agent, operated a motor vehicle on a public street, highway or road in this state and was involved in an accident or collision which has given rise to a civil action filed in any court in this state.

(6) “Street”, “road” or “highway” means the entire width between property lines of every way or place of whatever nature when any part of the street, road or highway is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(7) “Insurance company” means any firm, corporation, partnership or other organization which issues automobile insurance.

(h) The provision for service of process in this section is cumulative and nothing contained in this section shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner 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.

(a) The engaging by a nonresident, or by his or her duly authorized agent, in any one or more of the acts specified in subdivisions (1) through (7) of this subsection shall be deemed equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any circuit court in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, for a cause of action arising from or growing out of such act or acts, and the engaging in such act or acts shall be a signification of such nonresident’s agreement that any such process against him or her, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;

(3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he or she might reasonably have expected such person to use, consume or be affected by the goods in this state: Provided, That he or she also regularly does or solicits business, or engages in any other persistent
course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Having an interest in, using or possessing real property in this state; or

(7) Contracting to insure any person, property or risk located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), subsection (a) of this section may be asserted against him or her.

(c) Service shall be made by leaving the original and two copies of both the summons and the complaint, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the defendant at his or her nonresident address and the defendant’s return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk’s office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service the Secretary of State shall
create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service, judgment by default may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.

(d) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the action or proceeding. The Secretary of State shall keep a record in his or her office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership or
corporation or a firm, partnership or corporation which has moved from this state subsequent to any of said such act or acts.

(3) “Nonresident plaintiff or plaintiffs” means a nonresident of this state who institutes an action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this state pursuant to the provisions of this section.

(f) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action or proceeding from having process in such action served in any other mode or manner provided by the law of this state or by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(g) This section shall not be retroactive and the provisions hereof shall not be available to a plaintiff in a cause of action arising from or growing out of any of said 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.

(a) Any person who is:

(1) Not a resident of this state; or

(2) A resident of this state who has left this state; or

(3) A person whose residence is unknown shall be considered to have submitted to the jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection (b) of this section, if such conduct was:

(A) Committed in this state; or
(B) If such conduct was not committed in this state if the conduct was purposely directed at a resident and has an effect within this state.

(b) Conduct compelling application of this section consists of:

(1) Any act constituting domestic violence or abuse as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code; or

(2) Any act constituting a basis for seeking personal safety relief as defined in section four, article eight, chapter fifty-three of this code; or

(3) Any act or omission violating the provisions of a duly authorized protective or restraining order, whether issued by this state or another jurisdiction, for the protection of any person within this state.

(c) Any person subject to or considered to have submitted to the jurisdiction of the courts of this state who is made a respondent in an action may be served with the petition and order initiating such action either:

(1) By law-enforcement officers, wherever the respondent may be found, whether inside or outside the boundaries of this state; or

(2) If the respondent is alleged to have committed conduct specified in subsection (b) of this section, this shall be considered equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any court in this state, for a cause of action arising from or growing out of such conduct, and the engaging in such conduct is a signification of such nonresident’s agreement that any such process against him or her, which is served in the manner hereinafter
provided, is of the same legal force and validity as though such nonresident were personally served within this state.

(A) Such service shall be made by leaving two copies of both the petition and order, with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at his or her nonresident address and the respondent’s return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of the notice, petition and order has been signed, the Secretary of State shall notify the clerk’s office of the court from which the petition and order were issued by a means which may include electronic notification. If the notice, petition and order were refused or undeliverable by the United States Postal Service, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk’s office of the court from which the process, notice or demand was issued. If any respondent served with a petition and order fails to appear and defend at the time and place set forth in the order, judgment may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford
the respondent an opportunity to defend the action or proceeding.

(B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-three of this code regarding personal safety proceedings, no fees may be charged for service of petitions or orders until the matter is brought before the appropriate court for final resolution. Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of service shall be deferred and taxed in the costs of the action or proceeding.

(C) Data and records regarding service maintained by law-enforcement agencies and by the office of the Secretary of State for purposes of fulfilling the obligations of this section are not public records subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

(d) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such acts or acts covered by 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.

(a) Every nonresident bail bond enforcer or bail bondsman, for the privilege of entering this state to act in the capacity of a bail bond enforcer, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state for any act occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure; or for enforcement of any civil penalty for breach of a duty imposed by this code with respect to bail bondsmen employing or contracting with bail bond enforcers: Provided, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident bail bond enforcer or bondsman shall be deemed to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of liability insurance for his or her activities.

(b) For purposes of service of process as provided in this section, every insurance company shall be deemed the agent or attorney-in-fact of every nonresident bail bond enforcer or bondsman insured by the company if the insured nonresident bail bond enforcer or bondsman is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the
property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as hereinafter provided, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident bail bond enforcer or bail bondsman entering this state, either personally or through an agent, is deemed to acknowledge the appointment of the Secretary of State, or, as the case may be, his or her liability insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is deemed to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of any nonresident who dies subsequent to bail bond enforcement activity in this state by the nonresident or his or her duly authorized agent.

(d) At the time of filing a complaint against a nonresident bail bond enforcer or bondsman who has been involved in bail bond enforcement activity in the State of West Virginia and before a summons is issued thereon, the plaintiff, or someone for him or her, shall execute a bond in the sum of $100 before the clerk of the court in which the action is filed, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the
action he or she will reimburse the defendant, or cause the
defendant to be reimbursed, the necessary expense incurred
in the defense of the action in this state. Upon the issue of a
summons the clerk will certify thereon that the bond has
been given and approved.

(e) Service of process upon a nonresident defendant
shall be made by leaving the original and two copies of both
the summons and complaint, together with the bond
certificate of the clerk, and the fee required by section two,
article one, chapter fifty-nine of this code with the Secretary
of State, or in his or her office, and said service shall be
sufficient upon the nonresident defendant or, if a natural
person, his or her administrator, administratrix, executor or
executrix: Provided, That notice of service and a copy of the
summons and complaint shall be sent by registered or
certified mail, return receipt requested, by the Secretary of
State to the nonresident defendant. The return receipt signed
by the defendant or his or her duly authorized agent shall be
attached to the original summons and complaint and filed in
the office of the clerk of the court from which the process is
issued. In the event the registered or certified mail sent by the
Secretary of State is refused or unclaimed by the addressee or
if the addressee has moved without any forwarding address,
the registered or certified mail returned to the Secretary of
State, or to his or her office, showing thereon the stamp of the
post-office department that delivery has been refused or not
claimed or that the addressee has moved without any
forwarding address, the Secretary of State shall create a
preservation duplicate from which a reproduction of the
stored record may be retrieved which truly and accurately
depicts the image of the original record. The Secretary of
State may destroy or otherwise dispose of the original
returned or undeliverable mail. Written notice of the action
by the Secretary of State must then be provided by certified
mail, return receipt requested, facsimile, or by electronic
mail, to the clerk’s office of the court from which the process,
notice or demand was issued. The court may order such
continuances as may be reasonable to afford the defendant opportunity to defend the action.

(f) The fee remitted to the Secretary of State at the time of service, shall be taxed in the costs of the proceeding and the Secretary of State shall pay into the State Treasury all funds so coming into his or her hands from the service. The Secretary of State shall keep a record in his or her office of all service of process and the day and hour of service thereof.

(g) In the event service of process upon a nonresident defendant cannot be effected through the Secretary of State as provided by this section, service may be made upon the defendant’s insurance company. The plaintiff must file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the Secretary of State was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the Secretary of State showing the stamp of the post-office department that delivery was refused or that the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (e) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(h) The following words and phrases, when used in this article, shall, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

1. “Agent” or “duly authorized agent” means and includes, among others, a bail bond enforcer who, on behalf of a bail bondsman, is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures
or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure;

(2) “Nonresident” means any person who is not a resident of this state or a resident who has moved from the state subsequent to bail bond enforcement activity within this state, and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to bail bond enforcement activity;

(3) “Nonresident defendant or defendants” means a nonresident bail bond enforcer or bondsman who, either personally or through his or her agent, is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, which has given rise to a civil action filed in any court in this state;

(4) “Insurance company” means any firm, corporation, partnership or other organization which issues liability insurance.

(i) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

(j) This section is not retroactive and its provisions are not available to a plaintiff in a cause of action arising out of acts occurring prior to the effective date of this section.
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-1A-2 and §18B-1A-6 of said code be amended and reenacted; that §18B-1A-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-5-3, §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.

The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Administratively linked community and technical college” means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

(2) “Advanced technology center” means a facility established under the direction of an independent community and technical college or the council for the purpose of implementing and delivering education and training programs for high-skill, high-performance Twenty-first Century workplaces;

(3) “Approve” or “approval”, when used in reference to action by the Commission or the Council, means action in which the governance rationale of a governing board under its jurisdiction is given due consideration, and the action of the Commission is to additionally establish whether the proposed institutional action is consistent with law and established policy and is an appropriate advancement of the public interest;

(4) “Board of visitors” means the advisory board previously appointed for the West Virginia Graduate College and the advisory board previously appointed for West Virginia University Institute of Technology, which provide guidance to the Marshall University Graduate
College and West Virginia University Institute of Technology, respectively;

(5) “Broker” or “brokering” means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state;

(6) “Chancellor” means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

(7) “Chancellor for Community and Technical College Education” means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

(8) “Chancellor for Higher Education” means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

(9) “Collaboration” means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(10) “Community and technical college”, in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and
Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg;

(11) “Community and technical college education” means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;

(12) “Community and technical college education program” means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are under the jurisdiction of the council. Any reference to “post-secondary vocational education programs” means community and technical college education programs as defined in this subsection;

(13) “Confirm” or “confirmation”, when used in reference to action by the Commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the Commission is to review whether the proposed institutional action is consistent with law and established policy;
(14) “Council” means the West Virginia Council for Community and Technical College Education created by article two-b of this chapter;

(15) “Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level.

(16) “Essential conditions” means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(17) “Exempted schools” means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine;

(18) “Free-standing community and technical colleges” means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and Eastern West Virginia Community and Technical College, which may not be operated as branches or off-campus locations of any other state institution of higher education;

(19) “Governing boards” or “boards” means the institutional boards of Governors created by section one, article two-a of this chapter;

(20) “Higher Education Policy Commission”, “Policy Commission” or “Commission” means the commission created by section one, article one-b of this chapter;

(21) “Independent community and technical college” means a state institution of higher education under the jurisdiction of the council which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus
location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

(22) “Institutional compact” means the compact developed by a state institution of higher education, consistent with the public policy agenda for higher education;

(23) “Institutional operating budget” or “operating budget” means for any fiscal year an institution’s total unrestricted education and general funding from all sources, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(24) “Rule” or “rules” means a regulation, standard, policy or interpretation of general application and future effect;

(25) “Sponsoring institution” means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus or a division delivering community and technical college education and programs;
“State college and university” means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University or West Virginia State University;

(27) “State institution of higher education” means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

(28) “Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state; and

(29) “Vice Chancellor for Administration” means the person employed in accordance with section two, article four of this chapter. Any reference in this chapter or chapter eighteen-c of this code to “Senior Administrator” means Vice Chancellor for Administration.

§18B-1-6. Rulemaking.

(a) The commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article. This grant of rule-making authority does not limit, overrule, restrict, supplant or supersede the rule-making authority provided to the exempted schools.

(b) The council is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article. This grant of rule-making power
extends only to those areas over which the council has been
granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing
boards of state institutions of higher education to
promulgate, adopt, amend or repeal any rule under this
code:

(1) “Rule” means any regulation, guideline, directive,
standard, statement of policy or interpretation of general
application which has institution-wide effect or which
affects the rights, privileges or interests of employees,
students or citizens. Any regulation, guideline, directive,
standard, statement of policy or interpretation of general
application that meets this definition is a rule for the
purposes of this section.

(2) Regulations, guidelines or policies established for
individual units, divisions, departments or schools of the
institution, which deal solely with the internal management
or responsibilities of a single unit, division, department or
school or with academic curricular policies that do not
constitute a mission change for the institution, are excluded
from this subsection, except for the requirements relating to
posting.

(3) The commission shall promulgate a rule to guide the
development of rules made by the governing boards,
including a process for comment by the commission as
appropriate, except the exempted schools, who shall each
promulgate their own such rules. The council shall
promulgate a rule to guide the development and approval of
rules made by the governing boards. The commission and
council shall provide technical assistance in rulemaking as
requested. The rules promulgated by the exempted schools,
the commission and council shall include, but are not
limited to, the following provisions which shall be included
in the rule on rules adopted by each governing board of a
state institution of higher education:
(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a thirty-day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines and other policy statements are posted and can be accessed by the public;

(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines and other policy statements to the extent technically and financially feasible; and

(D) Except for the exempted schools, a procedure for the governing board to follow in submitting its rules for review and comment by the commission and approval by the council, as appropriate:

(i) The governing boards shall submit rules for review and comment to the commission.

(ii) The commission shall return to the governing board its comments and suggestions within fifteen business days of receiving the rule.

(iii) If a governing board receives comments or suggestions on a rule from the commission, it shall record these as part of the minute record. The rule is not effective and may not be implemented until the governing board holds a meeting and places on the meeting agenda the comments it has received from the commission.

(d) Nothing in this section requires that any rule reclassified or transferred by the commission or the council under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or modified.
(e) The commission and council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article.

(f) The governing boards shall promulgate and adopt any rule which they are required to adopt by this chapter or chapter eighteen-c of this code no later than July 1, 2011 unless a later date is specified. On and after this date:

1. Any rule of a governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

2. Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with this section.

(g) Within fifteen business days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended or repealed by the governing board. For all rules adopted, amended or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when each listed rule was promulgated and adopted.

(i) Any rule of the commission or council in effect at the time of the re-enactment of this section or approved by the Legislature during its 2017 Regular Session shall remain in
ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

There is hereby created the “Higher Education Policy Commission”, hereinafter referred to as the “commission”. It is the intent of the Legislature that the commission be responsible to provide shared services in a cost-effective manner upon request by the state colleges and universities, the council, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this code, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm or approve certain actions undertaken by the governing boards, as delineated in this chapter; and develop and gain consensus around the public policy agenda for higher education and other statewide issues pursuant to section one-a, article one of this chapter under the following conditions:

(a) It is the responsibility of the commission to work collaboratively with the governing boards and the council to develop and gain consensus around the public policy agenda for higher education.

(b) It is the responsibility of the council to oversee the implementation of the public policy agenda for the institutions under its jurisdiction.

(c) All matters of governance not specifically assigned to the commission or council by law are the duty and 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.

(a) The commission is comprised of ten members, all of whom are entitled to vote. The membership of the commission is as follows:

1. The Secretary of Education and the Arts, ex officio.
2. The State Superintendent of Schools, ex officio;
3. The chair of the West Virginia Council for Community and Technical College Education, ex officio.
4. Four at-large members who are citizens of the state, appointed by the Governor, by and with the advice and consent of the Senate.
5. Three at-large members who are designated as higher education representatives, appointed by the Governor, by and with the advice and consent of the Senate; for each of the higher education representatives, the Governor shall choose from recommendations made by any state college and university or exempted school and the Governor may request additional recommendations from state colleges and universities or exempted schools if in the governor in his or her sole discretion determines that additional recommendations are necessary for appointments to the commission.

(b) Each of the at-large members appointed by the Governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in state law and policy.

(c) The Governor may not appoint any person to be a member of the commission who is an officer, employee or member of the council or an advisory board of any state college or university or exempted school; an officer or member of any political party executive committee; the
holder of any other public office or public employment under the government of this state or any of its political subdivisions; an appointee or employee of any governing board; or an immediate family member of any employee under the jurisdiction of the commission, the council or any governing board.

(d) Of the seven, at-large members appointed by the Governor:

(1) No more than four may belong to the same political party;

(2) At least two shall be appointed from each congressional district; and

(3) Effective July 1, 2008, no more than one member may serve from the same county.

(e) The at-large members appointed by the Governor serve overlapping terms of four years.

(f) The Governor shall appoint a member to fill any vacancy among the seven at-large members, by and with the advice and consent of the Senate. Any member appointed to fill a vacancy serves for the unexpired term of the vacating member. The Governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(g) An at-large member appointed by the Governor may not serve more than two consecutive terms.

(h) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(i) A member of the commission appointed by the Governor may not be removed from office by the Governor
except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.


(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the council, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm or approve certain actions undertaken by governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to article one-d of this chapter to address major challenges facing the state, including, but not limited to, the following:

(A) The goals, objectives and priorities established in this chapter including specifically those goals, objectives and priorities pertaining to the compacts created pursuant to section seven, article one-d of this chapter; and
(B) Development of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction except the exempted schools. The rule shall meet the following criteria:

(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;

(3) In collaboration with the council and the governing boards:

(A) Building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature, the Governor, the governing boards, and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Assisting governing boards to carry out their duty effectively to govern the individual institutions of higher education;
(4) Except the exempted schools, review and comment on each compact for the governing boards under its jurisdiction, and final confirmation of each compact;

(5) Review and confirm the bi-annual updates of the institutional compacts, except the exempted schools;

(6) Serve as a point of contact to state policymakers:

(A) The Governor for the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability.

(7) Upon request, provide shared services to a state institution of higher education;

(8) Administer scholarship and grant programs as provided for in this code;

(9) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

(10) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter;

(11) Except the exempted schools, develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;

(12) Except the exempted schools, ensure that governing boards manage capital projects and facilities
needs effectively, including review and approval of capital projects, in accordance with article nineteen of this chapter;

(13) Acquire legal services as considered necessary, including representation of the commission, the governing boards, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(14) Employ a Chancellor for Higher Education pursuant to section five of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter;

(16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff;

(17) Advise and confirm in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article, except the exempted schools. The role of the commission in confirming an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals, objectives and priorities set forth in the compact, in section one-a, article one and article one-d of this chapter;

(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, except the exempted schools, as proposed by the governing boards. The governing boards, except the exempted schools, must obtain approval from the commission of the total compensation package both when institutional presidents
are employed initially and afterward when any change is made in the amount of the total compensation package: 

Provided, That the Commission will receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

(19) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(20) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of Schools;

(21) Jointly with the council, develop and implement an oversight plan to manage systemwide technology except the exempted schools, including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and
industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(22) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(23) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for any degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(25) Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted
academic credit or advanced placement standing toward the
requirements of an associate’s degree or a bachelor’s degree
at a state institution of higher education;

(26) Seek out and attend regional, national and
international meetings and forums on education and
workforce development-related topics as, in the
commission’s discretion, are critical for the performance of
their duties as members, for the purpose of keeping abreast
of education trends and policies to aid it in developing the
policies for this state to meet the established education
goals, objectives and priorities pursuant to section one-a,
article one and article one-d of this chapter;

(27) Promulgate and implement a rule for higher
education governing boards and institutions, except the
exempted schools, to follow when considering capital
projects pursuant to article nineteen of this chapter, which
rule shall provide for appropriate deference to the value
judgments of governing boards under the jurisdiction of the
commission;

(28) Submit to the appropriate agencies of the executive
and legislative branches of state government an appropriation
request that reflects recommended appropriations for the
commission and the governing boards under its jurisdiction.
The commission shall submit as part of its appropriation
request the separate recommended appropriation request it
received from the council, both for the council and for the
governing boards under the council’s jurisdiction, including
the exempted schools. The commission annually shall submit
the proposed allocations based on each institution’s progress
toward meeting the goals of its compact;

(29) The commission may assess institutions under its
jurisdiction, including the exempted schools, for the
payment of expenses of the commission or for the funding
of statewide higher education services, obligations or
initiatives related to the goals set forth for the provision of
public higher education in the state: Provided, That the
commission may not assess institutions pursuant to this subdivision on or after July 1, 2018;

(30) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning or severe sensory disabilities;

(31) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter;

(32) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(33) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(34) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

(C) Consideration of charges to out-of-state students; and

(D) Such other policies as the commission and council consider appropriate;
(35) Assist governing boards in actions to implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

(36) Notwithstanding any other provision of this code to the contrary, sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.

(37) Policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

(38) Development and approval of institutional mission definitions except the exempted schools, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

(39) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission’s authority to review and approve academic programs for the exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: Provided, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission’s authority as provided in section two, article one-c of this chapter;
(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:

(1) New programs should not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;

(2) New programs which will require significant additional expense investments for implementation should not be implemented unless the institution demonstrates that:

(i) The expenses will be addressed by effective reallocations of existing institutional resources; or

(ii) The expenses can be legitimately spread out over future years and will be covered by reasonably anticipated additional net revenues from new enrollments;

(3) A new undergraduate program which is significantly similar to an existing program already in the geographic service area should not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: Provided, That the academic programs of the exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may re-file the request for
approval with the commission to address any identified deficiencies. Within thirty days after the chancellor’s confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.

(40) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(41) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(42) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(43) Developing and distributing information, assessment, accountability and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(44) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in section two, article one of this chapter;

(45) Developing, facilitating, and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and
above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(46) (A) For all governing boards under its jurisdiction, except for the exempted schools, the commission shall review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds;

(B) For the governing boards of, the exempted schools, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission’s comments, if any, shall be made part of the governing board’s minute record and shall be filed with the Legislative Oversight Commission on Education Accountability;

(47) May provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than ninety percent within six months post-graduation; and

(48) May provide information, research and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article: Provided, That the provisions of this subsection shall not be construed to shift management authority from the governing boards to the commission.

(c) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:
(1) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(2) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at all higher education institutions, including four-year baccalaureate institutions and the community and technical colleges, and on or before January 1, 2018, the commission shall deliver its report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. This report shall include a recommendation to the Legislature on a formula for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. On such basis, the commission shall make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal year 2018.

§18B-1B-6. Appointment of institutional presidents; evaluation.
(a) Appointment of institutional presidents. — Appointment of presidents of the state institutions of higher education, except the exempted schools, shall be made as follows:

1. The initial contract term for a president may not exceed two years. At the end of the initial contract period, and subject to the provisions of subsection (c) of this section, the governing board may offer the president a contract of longer duration, but not to exceed five years.

2. The president of a state institution of higher education serves at the will and pleasure of the appointing governing board.

3. Subject to the confirmation of the commission, the governing boards of the following institutions, appoint a president: Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University and West Virginia State University. The exempted schools may appoint a president without the confirmation or approval of the Commission.

4. Subject to the approval of the council, the governing board of the community and technical college appoints a president for Blue Ridge Community and Technical College, Bridge Valley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg.

(b) Other appointments. — The President of West Virginia University appoints a campus president to be the administrative head of Potomac State College of West Virginia University and a campus president to be the
administrative head of West Virginia University Institute of Technology.

(c) Evaluation of presidents. —

(1) The appointing governing board shall conduct written performance evaluations of the institution’s president. Evaluations shall be done at the end of the initial contract period and in every third year of employment as president thereafter, recognizing unique characteristics of the institution and using institutional personnel, boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact and in achieving the goals, objectives and priorities established in articles one and one-d of this chapter.

(2) After reviewing the evaluations, the governing board shall make a determination by majority vote of its members on continuing employment and the compensation level for the president in accordance with subsection (a) of this section.

(d) The legislative rules of the commission and council promulgated in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code which are in effect on January 1, 2014, continue in effect unless amended or repealed. The rules provide guidance for the governing boards, but are not applicable to the exempted schools, in filling vacancies in the office of president in accordance with this chapter and shall include, but are not limited to, clarifying the powers, duties and roles of the governing boards, commission, council and chancellors in the presidential appointment process.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.
§18B-1D-2. Definitions.

(a) General. — For the purposes of this article and section one-a, article one of this chapter, terms have the meaning ascribed to them in section two, article one of this chapter, unless the context in which the term is used clearly requires a different meaning or a specific definition is provided in this section.

(b) Definitions. —

(1) “Accountability system for public higher education” or “accountability system” means all research, reports, documents, data and any other materials, the collection, analysis and dissemination of which are necessary or expedient to accomplish the purposes of this article or section one-a, article one of this chapter. The system includes legislative goals, objectives and priorities; public policy agendas; statewide master plans; state and institutional compacts; implementation plans; institutional mission statements and master plans; and the statewide report card.

(2) “Education partnership to achieve state goals and objectives” or “education partnership” means the formal and informal working relationships established between and among the State of West Virginia, the commission, the council, the State Board of Education and State Department of Education and the state institutions of higher education for the purpose of achieving state goals and objectives.

(3) “Functional literacy rate” means the percentage of adults over the age of seventeen who are able to read beyond a fourth grade level and interpret basic information from sources such as road signs, job applications, newspaper articles and food and medicine labels.

(4) “Goals” means those long-term public purposes which are the desired and expected end result for which public higher education is established.
(5) “Implementation plan” means a document developed within the higher education community that identifies a series of objectives, sets forth performance indicators that can be used to determine if objectives are being achieved, outlines strategies for accomplishing the objectives and identifies benchmarks for evaluating progress in accomplishing the objectives over the life cycle of the plan.

(6) “Institutions under the jurisdiction of the commission” relative to the accountability system established by this article and section one-a, article one of this chapter means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College, and West Virginia State University.

(7) “Institutions under the jurisdiction of the council” relative to the accountability system established by this article and section one-a, article one of this chapter means Blue Ridge Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology, Eastern West Virginia Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, West Virginia State Community and Technical College and West Virginia University at Parkersburg.

(8) “Net college costs” means the total cost of tuition, room and board minus the amount of financial aid a student receives.

(9) “Objectives” means the ends to be accomplished or attained within a specified period of time for the purpose of meeting the established goals.
“Priority” or “priorities” means the order in which objectives are to be addressed for the purpose of achieving state goals.

“Strategy” or “strategies” means specific activities carried out by public higher education which are directed toward accomplishing specific objectives.

“Statewide master plan” or “system master plan” means a document developed by the council or commission that sets forth system goals, objectives and strategies and is aligned with, but not limited to, meeting state goals, objectives and priorities.

“STEM courses and programs” means curricula leading to a degree or other recognized credential in the science, technology, engineering and mathematics fields of study or specialization.

“State compact” means a formal, written agreement between the council and/or the commission and at least one other member of the education partnership to achieve state goals and objectives where significant collaboration and commitment of resources between the parties to the agreement is required in order to achieve the desired results.


(a) It is the responsibility of the commission, in cooperation with the council, to develop, oversee and advance the public policy agenda mandated by section four, article one-b of this chapter to address the goals and objectives established pursuant to this article and section one-a, article one of this chapter, including, but not limited to, aligning state and institutional compacts, master plans, implementation plans and institutional missions for institutions of higher education except the exempted schools with state goals and objectives to accomplish the purposes of this article.
(b) It is the responsibility of the council, in cooperation with the commission when applicable, to develop, oversee and advance the public policy agenda mandated by section six, article two-b of this chapter to address the goals and objectives established pursuant to this article and section one-a, article one of this chapter, including, but not limited to, aligning state and institutional compacts, master plans, implementation plans and institutional missions with state goals and objectives to accomplish the purposes of this article.

(c) It is further the responsibility of the commission and council to collect the data, for institutions of higher education including the exempted schools, assemble it in the appropriate format and transmit all reports and any other essential documents as needed to fulfill the purposes of this article. Each report shall contain a brief, concise executive summary and shall include trends and recommendations in text format. Recommendations shall be ranked by order of importance and shall be supported by objective data available elsewhere in the report. In addition to those specifically mandated by this chapter or chapter eighteen-c of this code, reporting responsibilities include, but are not limited to, the following:

(1) Ensuring that data systems collect the essential information state-level policymakers’ need to answer key policy questions to fulfill the purposes of the accountability system established pursuant to this article and section one-a, article one of this chapter;

(2) Collaborating with public education to establish policies to link existing pre-K, K-12, higher education and teacher data systems to enable tracking of student progress and teacher performance over time; and

(3) Ensuring that reports provide data analyses to determine if students entering the public higher education systems are prepared for post-secondary education and if students obtaining degrees, certificates or other credentials are prepared to pursue careers or to continue their education.
(d) It is the responsibility of public institutions of higher education except the exempted schools to report to the commission or the council, as appropriate, on plans, accomplishments and recommendations to implement the goals and objectives contained in the institutional and state compacts.

§18B-1D-7. Findings; establishment of institutional compacts; compact elements; submission date; review and approval process; rule required.

(a) The Legislature finds that West Virginia long has recognized the value of education and, on a per capita income basis, ranks very high among the states in its investment to support public education. The Legislature further finds that a combination of state and national demographic and economic factors as well as significant changes in methods of course and program delivery compel both the state and public higher education to create a process that will strengthen institutional capacity to provide the services so valued by the citizens of the state and so essential to promoting economic vitality.

(b) Therefore, each state college or university except the exempted schools, shall prepare an institutional compact for submission to the commission and each community and technical college shall prepare an institutional compact for submission to the council. When the process herein provided is completed, the resulting institutional compact shall contain at a minimum the following basic components:

1. Institutional strategies for focusing resources on meeting the goals and objectives set forth in this article and section one-a, article one of this chapter; and

2. Commission or council strategies for promoting and supporting the institution in fulfilling its mission and objectives, to make it more competitive with its peers and to ensure the continuity of academic programs and services to its students.
(c) In addition to the basic contract components described in subsection (b) of this section, each compact shall contain at least the following elements:

1. A determination of the mission of the institution which specifically addresses changes necessary or expedient to accomplish the goals and objectives articulated by the state and the appropriate statewide master plan;

2. A detailed statement of how the compact is aligned with and will be implemented in conjunction with the master plan of the institution;

3. A comprehensive assessment of education needs within the institution’s geographic area of responsibility;

4. A strategy to ensure access to comprehensive community and technical college and workforce development services within each respective region of the state consistent with the mission of the institution;

5. Provision for collaboration and brokering of education services as necessary or expedient to carry out the institutional mission and meet its objectives;

6. Provision of student services at the optimum level to support the institutional mission and to achieve state goals and objectives;

7. Strategies for using existing infrastructure and resources within each region, where feasible, to increase student access while controlling costs and maintaining academic quality; and

8. Other public policy objectives or initiatives adopted by the commission or council pursuant to the intent and purposes of this article and section one-a, article one of this chapter.
(d) Each institutional compact shall be updated bi-
annually and shall follow the same general guidelines
contained in this section.

(e) Development and updating of the institutional
compacts is subject to the following conditions:

(1) The ultimate responsibility for developing and
updating the compacts at the institutional level resides with
the board of advisors or the board of governors, as
appropriate. It is the responsibility of the commission or
council to provide technical assistance as requested and to
assist the institution, with the exception of the exempted
schools, in development of the strategies to promote and
support the institution pursuant to subsection (b) of this
section;

(2) The commission and the council each shall establish
a date by which institutions, with the exception of the
exempted schools, under their respective jurisdictions shall
submit their compacts to the commission or council
pursuant to the provisions of this article. The date
established by each state-level coordinating board shall
apply uniformly to all institutions under the jurisdiction of
that coordinating board and shall meet the following
additional conditions:

(A) Allow sufficient time for careful analysis of the
compacts by the central office staff and for review by
members of the commission or the council, as appropriate;
and

(B) Allow sufficient time for the institutions to make
necessary revisions to the compacts as provided in this
section.

(3) The commission shall review each compact from the
institutions under its jurisdiction and either confirm the
compact or return it with specific comments for change or
improvement. The council shall review each compact from
the institutions under its jurisdiction and either adopt the compact or return it with specific comments for change or improvement. The commission and council, respectively, shall continue this process as long as each considers advisable;

(4) By May 1 bi-annually, if the institutional compact of any institution as presented by that institution is not confirmed by the commission or adopted by the council, then the commission or council is empowered and directed to develop and adopt the institutional compact for the institution and the institution is bound by the compact so adopted; and

(5) As far as practicable, the commission and council each shall establish uniform processes and forms for the development and submission of the institutional compacts by the institutions under their respective jurisdictions, taking into consideration the differences in institutional missions and objectives. As a part of this function, the commission and council each shall organize the statements of legislative goals and objectives contained in this article and section one-a, article one of this chapter in a manner that facilitates the purposes therein.

(f) Assignment of geographic areas of responsibility. —

(1) The commission shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction, except for the exempted schools. For institutions other than the exempted schools, the geographic areas of responsibility are made a part of their institutional compacts to ensure that all areas of the state are provided necessary programs and services to achieve state goals and objectives. The commission and the council each shall develop data-based measures to determine the extent to which institutions, with the exception of the exempted schools, under their respective jurisdictions are providing higher education services aligned with state goals and objectives and institutional missions within their geographic
areas of responsibility. This information shall be reported in
the statewide report card established pursuant to section
eight of this article.

(2) The council shall assign geographic areas of
responsibility to the state institutions of higher education
under its jurisdiction, including the administratively linked
institution known as Marshall Community and Technical
College, the administratively linked institution known as the
Community and Technical College at West Virginia
University Institute of Technology and the regional campus
known as West Virginia University at Parkersburg.

(3) The geographic areas of responsibility for the state
institutions of higher education known as West Virginia
School of Osteopathic Medicine, Marshall University and
West Virginia University are assigned by the Legislature.

(4) The benchmarks established in the institutional
compacts include measures of programs and services by
geographic area throughout the assigned geographic area of
responsibility.

(g) The compacts shall contain benchmarks to be used
to determine progress toward meeting the objectives
established in the compacts. The benchmarks shall meet the
following criteria:

(1) They shall be objective;

(2) They shall be directly linked to the objectives in the
compacts;

(3) They shall be measured by the indicators described
in subsection (h) of this section; and

(4) Where applicable, they shall be used to measure
progress in geographic areas of responsibility.

(h) The rules required by subsection (c), section one of
this article shall include indicators which measure the
degree to which the goals and objectives set forth in this article and section one-a, article one of this chapter are being met by the institutions under the jurisdiction of the commission and the council, respectively.

(1) The rules pertaining to benchmarks and indicators in effect for the commission and the council on the effective date of this section remain in effect for the institutions under their respective jurisdictions until amended, modified, repealed or replaced by the commission or the council, respectively, pursuant to the provisions of this article, section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code.

(2) The rules shall set forth at least the following as pertains to all state institutions of higher education, except the exempted schools:

(A) The indicators used to measure the degree to which the goals and objectives are being met;

(B) Uniform definitions for the various data elements to be used in establishing the indicators;

(C) Guidelines for the collection and reporting of data; and

(D) Sufficient detail within the benchmarks and indicators to provide the following information:

(i) Measurable evidence that the pursuits of the institution are focused on the education needs of the citizens of the state and are aligned with the objectives of the institutional compacts and statewide master plans;

(ii) Delineation of the objectives and benchmarks for an institution so that the commission or council can precisely measure the degree to which progress is being made toward achieving the goals and objectives provided in this article and section one-a, article one of this chapter: Provided, That
the commission has no authority regarding the objectives and benchmarks for exempted schools; and

(iii) Identification of specific objectives within the master plan or compact of an institution that are not being met or toward which sufficient progress is not being made.

(3) In addition to any other requirement, the rule established by the council shall set forth at least the following as pertains to community and technical college education:

(A) Benchmarks and indicators which are targeted to identify the following:

(i) The degree to which progress is being made by institutions toward meeting state goals and objectives and the essential conditions for community and technical college education pursuant to section three, article three-c of this chapter;

(ii) Information and data necessary to be considered by the council in making the determination required by section three, article two-c of this chapter; and

(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination by the council that an institution’s progress toward achieving state goals and objectives and the essential conditions for community and technical college education is so deficient that implementation of the provisions of section four, article two-c of this chapter is warranted and necessary.

(i) The commission shall confirm the compacts developed for the institutions under its jurisdiction, with the exception of the exempted schools, by the boards of governors or the boards of advisors pursuant to this section and consistent with the powers and duties prescribed in section four, article two-a of this chapter and section one, article six of this chapter.
(ii) The council shall approve the compacts developed for the institutions under its jurisdiction, by the boards of governors or the boards of advisors pursuant to this section and consistent with the powers and duties prescribed in section four, article two-a of this chapter and section one, article six of this chapter.

§18B-1F-10. Department of commerce to study and report relating to research and technology parks.

The West Virginia Development Office shall research, investigate and make recommendations relating to advancing research activities, economic development and job creation relating to foundations and private entities, including the I-79 Technology Park, 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. The Development Office shall submit a report of its investigation and findings to the Governor and the 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.

(a) The governing boards are subject to the oversight of the commission or the council, as appropriate, except that the authority of the commission relating to the exempted schools is limited to the specific authorities granted under this chapter.

(b) The Chancellor for Higher Education and the Chancellor for Community and Technical College Education, under the supervision of their respective boards, are responsible for the coordination of policies, purposes and rules of the governing boards except the exempted schools and shall provide for and facilitate sufficient interaction among the governing boards and between the governing boards and the State Board of Education to meet
the goals and objectives provided in the compacts and in section one-a, article one and article one-d of this chapter.

(c) The governing boards and the State Board of Education shall provide all information requested by the commission and the council, whether the request is made separately or jointly, in an appropriate format and in a timely manner.

(d)(1) Each governing board shall cooperate with the West Virginia Network for Educational Telecomputing (WVNET) in designing appropriate interfaces with the databases of institutions under its jurisdiction and shall grant WVNET direct access to these databases.

(2) WVNET, on behalf of the commission or council or both, shall generate reports from the data accessed for the purposes set forth in section five, article one-a and sections eight and ten, article one-d of this chapter.

(3) All data accessed or received from an institution shall be treated in a manner consistent with the privacy protections outlined in section ten, article one-d of this chapter.


Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institution of higher education under its jurisdiction;

(b) Develop a master plan for the institution under its jurisdiction.

(1) The ultimate responsibility for developing and updating each master plan at the institution resides with the governing board, but the ultimate responsibility for approving the final version of each master plan, including
periodic updates, resides with the commission or council, as appropriate: Provided, That commission approval is not required for master plans of exempted schools.

(2) Each master plan shall include, but is not limited to, the following:

(A) A detailed demonstration of how the master plan will be used to meet the goals, objectives and priorities of the compact;

(B) A well-developed set of goals, objectives and priorities outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;

(C) Documentation showing how the governing board involved the commission or council, as appropriate, constituency groups, clientele of the institution and the general public in the development of all segments of the master plan.

(3) The plan shall be established for periods of not fewer than three nor more than five years and shall be revised periodically as necessary, including adding or deleting programs. The commission may review and comment upon the master plan of an exempted school. The commission may review, but may not approve or disapprove, additions or deletions of degree programs, except as expressly provided for in subdivision (39), subsection (a), section four of article one-b of this chapter.

(4) For the exempted schools, the master plan shall be updated at least bi-annually and include the steps taken to meet the legislatively established policies contained in article one-d of this chapter and reports on each of the data elements identified in article one-d of this chapter, including
progress that the exempted schools are making relating to retention and graduation rates for resident students by organization and each college within the organization. The exempted schools shall provide copies of their respective master plan to the Legislative Oversight Commission on Education Accountability and the commission.

(c) Develop a ten-year campus development plan in accordance with article nineteen of this chapter;

(d) Prescribe for the institution, under its jurisdiction, in accordance with its master plan and compact, specific functions and responsibilities to achieve the goals, objectives and priorities established in articles one and one of this chapter to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(e) Direct the preparation of an appropriation request for the institution under its jurisdiction, which relates directly to missions, goals and projections found in the master plan and the compact;

(f) Consider, revise and submit for review and approval to the commission or council, as appropriate, an appropriation request on behalf of the institution under its jurisdiction, including the exempted schools;

(g) Review, at least every five years, all academic programs offered at the institution under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to established state goals, objectives and priorities, the master plan, the compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institution under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;
(h) Ensure that the sequence and availability of academic programs and courses offered by the institution under its jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at the institution is transferable to any other state institution of higher education for credit with the grade earned;

(i) Subject to article one-b of this chapter, approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(j) Involve faculty, students and classified employees in institution-level planning and decision making when those groups are affected;

(k) Subject to federal law and pursuant to articles seven, eight, nine and nine-a of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, discipline for employees at the institution under its jurisdiction: Provided, That any rules adopted by the commission and the council do not apply to exempted schools;

(l) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the
exclusive mechanism for hearing prospective employee
grievances and appeals;

(m) Solicit and use or expend voluntary support,  
including financial contributions and support services, for  
the institution under its jurisdiction;

(n) Appoint a president for the institution under its  
jurisdiction, subject to section six, article one-b of this  
chapter;

(o) Conduct written performance evaluations of the  
president, pursuant to section six, article one-b of this  
chapter;

(p) Employ all faculty and staff at the institution under  
its jurisdiction. The employees operate under the  
supervision of the president, but are employees of the  
governing board;

(q) Submit to the commission or council, as  
appropriate, any data or reports requested by the  
commission or council within the time frame set by the  
commission or council;

(r) Enter into contracts or consortium agreements with  
the public schools, private schools or private industry to  
provide technical, vocational, college preparatory, remedial  
and customized training courses at locations either on  
campuses of the state institutions of higher education or at  
off-campus locations in the institution’s responsibility  
district. To accomplish this goal, the boards may share  
resources among the various groups in the community;

(s) Provide and transfer funds and property to certain  
corporations pursuant to section ten, article twelve of this  
chapter;

(t) Delegate, with prescribed standards and limitations,  
the part of its power and control over the business affairs of  
the institution to the president in any case where it considers
the delegation necessary and prudent in order to enable the
institution to function in a proper and expeditious manner
and to meet the requirements of its master plan and compact.
If a governing board elects to delegate any of its power and
control under this subsection, it shall enter the delegation in
the minutes of the meeting when the decision was made and
shall notify the commission or council, as appropriate. Any
delegation of power and control may be rescinded by the
appropriate governing board, the commission or council, as
appropriate, at any time, in whole or in part, except that the
commission may not revoke delegations of authority made
by the governing board of the exempted schools.

(u) Unless changed by the commission or the council,
as appropriate, continue to abide by existing rules setting
forth standards for accepting advanced placement credit for
the institution under its jurisdiction. Individual departments
at a state institution of higher education, with approval of
the faculty senate, may require higher scores on the
advanced placement test than scores designated by the
governing board when the credit is to be used toward
meeting a requirement of the core curriculum for a major in
that department;

(v) Consult, cooperate and coordinate with the State
Treasurer and the State Auditor to update as necessary and
maintain an efficient and cost-effective system for the
financial management and expenditure of appropriated and
nonappropriated revenue at the institution under its
jurisdiction. The system shall ensure that properly
submitted requests for payment are paid on or before the due
date but, in any event, within fifteen days of receipt in the
State Auditor’s Office;

(w) In consultation with the appropriate chancellor and
the Secretary of the Department of Administration, develop,
update as necessary and maintain a plan to administer a
consistent method of conducting personnel transactions,
including, but not limited to, hiring, dismissal, promotions,
changes in salary or compensation and transfers at the
institution under its jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms, as appropriate, which shall be submitted to the respective governing board and the Department of Administration:

1. Not later than July 1, 2012, the Department of Administration shall make available to each governing board the option of using a standardized electronic system for these personnel transactions.

2. The Secretary of the Department of Administration may suspend a governing board’s participation in the standardized electronic system if he or she certifies to the Governor that the governing board has failed repeatedly and substantially to comply with the department’s policies for administering the electronic system;

x. Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for its use to any corresponding line item in a general revenue account at any agency or institution under its jurisdiction as long as the transferred funds are used for the purposes appropriated;

y. Transfer funds from appropriated special revenue accounts for capital improvements under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction as long as the transferred funds are used for the purposes appropriated in accordance with article nineteen of this chapter;

z. Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing board, its institution, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing board may, but is not required to, call upon
the Attorney General for legal assistance and representation as provided by law; and

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

(bb) A governing board under the jurisdiction of the commission may contract and pay for any supplemental employee benefit, at the governing board’s discretion: Provided, That if such supplemental benefit program incurs institutional expense, then the board may not delegate the approval of such supplemental employee benefit program.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF EXEMPTED SCHOOLS.

§18B-3-1. Legislative findings, purpose; intent; definition.

(a) The Legislature finds that an effective and efficient system of doctoral-level education is vital to providing for the economic well-being of the citizens of West Virginia and for accomplishing established state goals and objectives. As the institutions that focus on one or more of the following activities: research, masters-degree granting, doctoral-granting, medical doctoral-granting, or doctor of osteopathy doctor-granting; doctoral-granting medical doctoral-granting, or doctor of osteopathy doctor-granting public universities in the state, Marshall University, West Virginia University and the School of Osteopathic Medicine are major assets to the citizens of West Virginia and must be an integral part of any plan to strengthen and expand the economy and improve health outcomes for the citizenry.

(b) The Legislature further finds that these three institutions must compete in both a national and global environment that is rapidly changing, while they continue to provide high quality education that is both affordable and accessible and remain accountable to the people of West
Virginia for the most efficient and effective use of scarce resources.

(c) The Legislature further finds that the exempted schools, under the direction of their respective governing boards, may manage operational governance of their institutions in an efficient and accountable manner and may best fulfill their public missions when their governing boards are given flexibility and autonomy sufficient to meet state goals, objectives and priorities established in this article, and in section one-a, article one and article one-d of this chapter.

(d) Therefore, the purposes of this article include, but are not limited to, the following:

(1) Enhancing the competitive position of the exempted schools in the current environment for research and medical professional development;

(2) Providing the governing boards of these institutions with operational flexibility and autonomy in certain areas, including tools to promote economic development and healthcare in West Virginia;

(3) Encouraging the development of research and medical expertise in areas directly beneficial to the state;

(4) Focusing the attention and resources of the governing boards on state goals, objectives and priorities to enhance the competitive position of the state and the economic, social, health, and cultural well-being of its citizens; and

(5) Providing additional autonomy and operational flexibility and assigning certain additional responsibilities to governing boards of other state institutions of higher education.
(e) The governing boards of the exempted schools each have the power and the obligation to perform functions, tasks and duties as prescribed by law.

(f) While the governing boards may choose to delegate powers and duties to their respective presidents pursuant to subsection(s), section four, article two-a of this chapter, ultimately, it is they who are accountable to the Legislature, the Governor and the citizens of West Virginia for meeting the established state goals, objectives and priorities set forth in this article, and in section one-a, article one and article one-d of this chapter. Therefore, grants of operational flexibility and autonomy are made directly to the governing boards and are not grants of operational flexibility and autonomy to the president of an institution.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

(a) The council shall make rules for the accreditation of community and technical colleges in this state and shall determine the minimum standards for conferring degrees. The commission shall make rules for the accreditation of colleges in this state except the governing boards of the exempted schools shall make rules for their respective institutions, and each shall determine the minimum standards for conferring degrees. The governing boards of the exempted schools shall promulgate rules pursuant to the provisions of section six, article one of this chapter for the accreditation of their respective institutions.

(b) An institution of higher education may not confer a degree on any basis of work or merit below the minimum standards prescribed by the council or commission.

(c) With the approval of the commission and subject to subsections (e), (f) and (g) of this section, governing boards of institutions which currently offer substantial
undergraduate course offerings and a master’s degree in a discipline are authorized to grant baccalaureate degrees in that discipline.

(d) Except as otherwise provided in this section, a charter or other instrument containing the right to confer degrees of higher education status may not be granted by the State of West Virginia to an institution, association or organization within the state, nor may a degree be awarded, until the condition of conferring the degree first has been approved in writing by the council or commission, as appropriate, or by the institution’s governing board in the case of the exempted schools.

(e) To retain the authority to confer degrees pursuant to this section, each institution shall provide annually to the commission or council, as requested, all information the commission or council considers necessary to assess the performance of the institution and to determine whether the institution continues to meet the minimum standards for conferring degrees. This information includes, but is not limited to, the following data:

(1) All information current and future federal or state laws and regulations require the institution to report to the public, to students, to employees or to federal or state agencies;

(2) Other consumer information the commission or council considers necessary, including, but not limited to, graduation and retention rates, transfers, post-graduation placements, loan defaults and numbers and types of student complaints;

(3) A detailed explanation of financial operations including, but not limited to, policies, formulas and procedures related to calculation, payment and refund for all tuition and fees; and
(4) An assessment of the adequacy of the institution’s curriculum, personnel, facilities, materials and equipment to meet the minimum standards for conferring degrees.

(f) The commission and council may conduct on-site reviews to evaluate an institution’s academic standards, may conduct financial audits, or may require the institution to perform these audits and provide detailed data to the commission or council.

(g) The commission or council shall revoke an institution’s authority to confer degrees when the institution’s governing body, chief executive officer, or both, have done any one or more of the following:

(1) Failed to maintain the minimum standards for conferring degrees; or

(2) Willfully provided false, misleading or incomplete information to the commission or council.

(h) The commission and council each shall compile the information collected pursuant to subdivisions (e), (f) and (g) of this section and submit a report on the information to the Legislative Oversight Commission on Education Accountability annually beginning December 1, 2012. The commission and council each shall make the information and report available to the public in a form and manner that is accessible to the general public, including, but not limited 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.

(a) The council, commission and each governing board shall purchase or acquire all materials, supplies, equipment, services and printing required for their respective needs: Provided, That the governing boards under the jurisdiction
of the commission, including the exempted schools, are subject to subsection (d) of this section.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section: Provided, That these rules do not apply to the exempted schools and the governing boards of the exempted schools shall adopt their own rules consistent with this section: Provided, however, That the joint rules shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission. The rules shall ensure that the following procedures are followed:

(1) No person is precluded from participating and making sales thereof to the council, commission or governing board except as otherwise provided in section five of this article. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

(2) Specifications are established and prescribed for materials, supplies, equipment, services and printing to be purchased;

(3) Purchase order, requisition or other forms as may be required are adopted and prescribed;

(4) Purchases and acquisitions in such quantities, at such times and under contract, are negotiated for and made in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Bids are advertised on all purchases exceeding $50,000 and made by means of sealed or electronically submitted bids and competitive bidding or advantageous purchases effected through other accepted governmental
methods and practices. Competitive bids are not required for purchases of $50,000 or less.

(6) Notices for acquisitions and purchases for which competitive bids are being solicited are posted either in the purchasing office of the specified institution involved in the purchase or by electronic means available to the public at least five days prior to making the purchases. The rules shall ensure that the notice is available to the public during business hours;

(7) Purchases are made in the open market;

(8) Vendors are notified of bid solicitation and emergency purchasing; and

(9) No fewer than three bids are obtained when bidding is required, except if fewer than three bids are submitted, an award may be made from among those received.

c) When a state institution of higher education submits a contract, agreement or other document to the Attorney General for approval as to form as required by this chapter, the following conditions apply:

(1) "Form" means compliance with the Constitution and statutes of the State of West Virginia;

(2) The Attorney General does not have the authority to reject a contract, agreement or other document based on the substantive provisions in the contract, agreement or document or any extrinsic matter as long as it complies with the Constitution and statutes of this state;

(3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state institution of higher education in writing that the contract, agreement or other document is approved or disapproved as to form. If the contract, agreement or other document is disapproved as to form, the notice of disapproval shall identify each defect that supports the disapproval; and
(4) If the state institution elects to challenge the disapproval by filing a writ of mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards under the jurisdiction of the commission, including the exempted schools, respectively, may carry out the following actions:

(1) Purchase or acquire all materials, supplies, equipment, services and printing required for the governing board without approval from the commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in subsection (f) of this section;

(2) Purchase from cooperative buying groups, consortia, the federal government or from federal government contracts, or from West Virginia public institution of higher education contracts, if the materials, supplies, services, equipment or printing to be purchased is available from these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space or other space, and capital improvements, including equipment, if the rental is necessarily required by the governing board; and

(4) Use purchase cards.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to section six, article one of this chapter to govern and control acquisitions, purchases, leases and other instruments for grounds, buildings, office or other space, and capital improvements, including equipment, or lease-purchase agreements.
(f) The council, commission or each governing board may issue a check in advance to a company supplying postage meters for postage used by that board, the council or commission and by the state institutions of higher education under their jurisdiction.

(g) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council or commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code applies to the competitive bids made pursuant to this section.

(h) The governing boards, council and commission shall maintain a purchase file, which shall be a public record and open for public inspection.

(1) After the award of the order or contract, the governing boards, council and commission shall indicate upon the successful bid the following information:

(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

(C) The reason for rejection, if the mathematical low vendor was not awarded the order or contract.

(2) A record in the purchase file may not be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the Legislative Auditor.
All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

The commission and council, also jointly, shall promulgate rules to prescribe qualifications to be met by any person who is to be employed as a buyer at a state college and university or community and technical college pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of employment, has one of the following qualifications:

1. Is a graduate of an accredited college or university;

2. Has at least four years’ experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of $50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount
for competitive sealed bids in this section are required to be
encumbered. Such purchases may be entered into the state’s
centralized accounting system by the staff of the
commission, council or governing boards to satisfy the
requirements of article two, chapter five-a of this code to
determine whether the amount of the purchase is within the
quarterly allotment of the commission, council or governing
board, is in accordance with the approved expenditure
schedule and otherwise conforms to the article: Provided,
That, notwithstanding the foregoing provisions of this
subsection or any other provision of this code to the
contrary, purchases by exempted schools are not required to
be encumbered.

(l) The governing boards, council or commission may
make requisitions upon the State Auditor for a sum to be
known as an advance allowance account, not to exceed five
percent of the total of the appropriations for the governing
board, council or commission, and the State Auditor shall
draw a warrant upon the Treasurer for those accounts. All
advance allowance accounts shall be accounted for by the
applicable governing board or the council or commission
once every thirty days or more often if required by the State
Auditor.

(m) Contracts entered into pursuant to this section shall
be signed by the applicable governing board or the council
or commission in the name of the state and shall be
approved as to form by the Attorney General. A contract
which requires approval as to form by the Attorney General
is considered approved if the Attorney General has not
responded within fifteen days of presentation of the
contract. A contract or a change order for that contract and
notwithstanding any other provision of this code to the
contrary, associated documents such as performance and
labor/material payments, bonds and certificates of insurance
which use terms and conditions or standardized forms
previously approved by the Attorney General and do not
make substantive changes in the terms and conditions of the
contract do not require approval as to form by the Attorney General. The Attorney General shall make a list of those changes which he or she considers to be substantive and the list, and any changes to the list, shall be published in the State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this section shall be filed with the State Auditor. If requested to do so, the governing boards, council or commission shall make all contracts available for inspection by the State Auditor. The governing board, council or commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.

(n) If the governing board, council or commission purchases or contracts for materials, supplies, equipment, services and printing contrary to sections four through seven, inclusive, of this article or the rules pursuant to this article, the purchase or contract is void and of no effect.

(o) A governing board or the council or commission, as appropriate, may request the director of purchasing to make available the facilities and services of that department to the governing boards, council or commission in the purchase and acquisition of materials, supplies, equipment, services and printing. The director of purchasing shall cooperate with that governing board, council or commission, as appropriate, in all such purchases and acquisitions upon that request.

(p) Each governing board or the council or commission, as appropriate, may permit affiliated organizations, state institutions of higher education, or private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services and equipment entered into by that governing board or the council or commission. An affiliated organization, state institution of higher education or private institution desiring to join as purchaser on purchase contracts shall file with that governing board or
the council or commission, as appropriate, an affidavit signed by the president or designee of the affiliated organization, state institution of higher education, or private institution requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council or commission, as appropriate. The affiliated organization, state institution of higher education or private institution shall agree that it is bound by such terms and conditions as that governing board or the council or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(q) Notwithstanding any other provision of this code to the contrary, the governing boards, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from that source, and purchasing from that source would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher education shall be performed at least once in each three-year period. The Joint Committee on Government and Finance shall require a performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(1) The governing board shall provide for independent performance audits of all purchasing functions and duties on its campus at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.
(3) Copies of all appropriate documents relating to any audit performed by a governing board shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

(s) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of section fifty-four, article three, chapter five-a of this code, also known as the Prompt Pay Act of 1990.

(t) Consultant services, such as strategic planning services, do not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(u) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any state college and university or community and technical college using purchasing cards. The governing boards of the exempted schools shall establish procedures to be implemented by their respective institutions. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.
(2) Notwithstanding any other provision of this code to the contrary, the council, commission and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job duties of the traveling employee, including, but not limited to, fuel and food; and

(B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees.

(3) The commission and council each shall evaluate the capacity of each state college and university and community and technical college under its jurisdiction for complying with the procedures established pursuant to subdivision (2) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any state college and university and community and technical college it determines has the 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.

(a) The provisions of article three, chapter five-a of this code and article twenty-two-a, chapter five of this code do not control or govern design-build procurement or the purchase, acquisition or other disposition of any equipment, materials, supplies, services or printing by the commission or the governing boards, except as provided in sections four through seven, inclusive, of this article. Sections twenty-nine, thirty and thirty-one, article three, chapter five-a of this code apply to all purchasing activities of the commission and the governing boards.
(b) Notwithstanding any provision of this code to the contrary, state institutions of higher education, through their governing boards, may enter into design-build contracts and are not subject to the provisions of article twenty-two-a, chapter five of this code and may also utilize other commonly accepted methods of procurement and contracting for construction projects: Provided, That such state institution of higher education meets the following criteria:

(1) Employs at least one Leadership in Energy and Environmental Design (LEED) certified administrator; and

(2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the International Facility Management Association, or employs at least one Project Management Professional (PMP) as certified by the Project Management Institute.

(c) Neither the commission, the governing boards, nor any employee of the commission or governing boards may be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services or printing, nor in any firm, partnership, corporation or association furnishing them, except as may be authorized by the provisions of chapter six-b of this code. Neither the commission, the governing boards nor any employee of the commission or governing boards may accept or receive directly or indirectly from any person, firm or corporation, known by the commission, governing boards or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation, except as may be authorized by the provisions of chapter six-b of this code.

A person who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in jail not less than three
months nor more than one year, or fined not less than $50
nor more than $1,000, or both imprisoned and fined, in the
discretion of the court. Any person who violates any
provisions of this section by receiving money or other thing
of value under circumstances constituting the crime of
bribery under the provisions of section three, article five-a,
chapter sixty-one of this code shall, upon conviction of
bribery, be punished as provided in section nine of said
article.

§18B-5-7. Disposition of obsolete and unusable equipment,
surplus supplies and other unneeded materials.

(a) The commission, the council and the governing
boards shall dispose of obsolete and unusable equipment,
surplus supplies and other unneeded materials, either by
transfer to other governmental agencies or institutions, by
exchange or trade, or by sale as junk or otherwise. The
commission, the council and each governing board shall
adopt rules governing and controlling the disposition of all
such equipment, supplies and materials. The rules shall
provide for disposition of the equipment, supplies and
materials as sound business practices warrant under existing
circumstances and conditions and for adequate prior notice
to the public of the disposition.

(b) The commission, council or governing board, as
appropriate, shall report biannually to the Legislative
Auditor all sales of commodities made during the preceding
biennium. The report shall include a description of the
commodities sold, the name of the buyer to whom each
commodity was sold, the price paid by the buyer.

(c) The proceeds of sales or transfers shall be deposited
in the state treasury to the credit on a pro rata basis of the
fund or funds from which the purchase of the particular
commodities or expendable commodities was made. The
commission, council or governing board, as appropriate,
may charge and assess fees reasonably related to the costs
of care and handling with respect to the transfer,
warehousing, sale and distribution of state property that is disposed of or sold pursuant to the provisions of this section.

(d) Notwithstanding the provisions of this section, the commission, council or a governing board may donate equipment, supplies and materials with the approval of the commission, council or governing board or their designee, as appropriate to any not for profit entity to promote public welfare.


(a) The governing boards shall ensure the fiscal integrity of their operations using best business and management practices.

(1) The practices include at least the following:

(A) Complying with Generally Accepted Accounting Principles of the Governmental Accounting Standards Board (GAAP); and the Generally Accepted Government Auditing Standards of the Government Accountability Office (GAGAS);

(B) Operating without material weakness in internal controls as defined by GAAP, GAGAS and, where applicable, the Office of Management and Budget (OMB) Uniform Guidance Audit requirements;

(C) Maintaining annual audited financial statements with an unqualified opinion;

(D) Preparing annual audited financial statements as coordinated and directed by the commission and council, respectively, and as the commission requires to complete the higher education fund audit;

(E) Maintaining quarterly financial statements certified by the chief financial officer of the institution; and
(F) Implementing best practices from Sarbanes-Oxley, or adopting the applicable tenets of Sarbanes-Oxley as best practices.

(2) Each governing board and any affiliated research corporation shall comply with the OMB Uniform Guidance Audit requirements and are exempt from section fourteen, article four, chapter twelve of this code.

(3) Within thirty days of the completion of the financial audit report, the governing boards shall furnish to the commission or council, respectively, copies of the annual audited financial statements.

(b) The commission and council, each, shall ensure the fiscal integrity of any electronic process conducted at its offices and by the governing boards under its respective jurisdiction by applying best business and management practices.

(c) To the maximum extent practicable, each higher education organization shall provide for its employees to receive their wages via electronic transfer or direct deposit.

(d) Notwithstanding any other provision of this code to the contrary, a purchasing card may be used by the council, the commission or a governing board of a state institution of higher education to make any payment authorized by the Auditor, including regular routine payments and travel and emergency payments. Payments are set at an amount to be determined by the Auditor.

(1) Subject to approval of the Auditor, an emergency payment and a routine, regularly scheduled payment, including, but not limited to, utility payments, contracts and real property rental fees, may exceed this limit by an amount to be determined by the Auditor.

(2) The council, commission and a governing board of a state institution of higher education may use a purchasing card for travel expenses directly related to the job duties of
the traveling employee. Where approved by the Auditor, the expenses may exceed $5,000 by an amount to be determined by the Auditor. Traveling expenses may include registration fees and airline and other transportation reservations, if approved by the president of the institution. Traveling expenses may include purchases of fuel and food.

(3) The commission, council, and governing boards each shall maintain one purchasing card for use only in a situation declared an emergency by the appropriate chancellor or the institution’s president. Emergencies may include, but are not limited to, partial or total destruction of a facility; loss of a critical component of utility infrastructure; heating, ventilation or air condition failure in an essential academic building; loss of campus road, parking lot or campus entrance; a technology breach; or a local, regional, or national emergency situation that has a direct impact on the campus.

(e) Notwithstanding section ten-f, article three, chapter twelve of this code, or any other provision of this code or law to the contrary, the Auditor shall accept any receiving report submitted in a format utilizing electronic media. The Auditor shall conduct any audit or investigation of the council, commission or governing board at its own expense and at no cost to the council, commission or governing board.

(f) The council and the commission each shall maintain a rule in accordance with article three-a, chapter twenty-nine-a of this code. The rule shall provide for governing boards individually or cooperatively to maximize their use of any of the following purchasing practices that are determined to provide a financial advantage:

(1) Bulk purchasing;

(2) Reverse bidding;

(3) Electronic marketplaces; and
(4) Electronic remitting.

(g) Each governing board may establish a consortium with at least one other governing board, in the most cost-efficient manner feasible, to consolidate the following operations and student services:

(1) Payroll operations;
(2) Human resources operations;
(3) Warehousing operations;
(4) Financial transactions;
(5) Student financial aid application, processing and disbursement;
(6) Standard and bulk purchasing; and
(7) Any other operation or service appropriate for consolidation as determined by the council or commission.

(h) A governing board may charge a fee to the governing board of each institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing the service.

(i) A governing board may provide the services authorized by this section for the benefit of any governmental body or public or private institution.

(j) Each governing board shall strive to minimize its number of low-enrollment sections of introductory courses. To the maximum extent practicable, governing boards shall use distance learning to consolidate the course sections. The council and commission shall report the progress of reductions as requested by the Legislative Oversight Commission on Education Accountability.
(k) A governing board shall use its natural resources and alternative fuel resources to the maximum extent feasible. The governing board:

(1) May supply the resources for its own use and for use by the governing board of any other institution;

(2) May supply the resources to the general public at fair market value;

(3) Shall maximize all federal or grant funds available for research regarding alternative energy sources; and

(4) May develop research parks to further the purpose of this section and to expand the economic development opportunities in the state.

(l) Any cost-savings realized or fee procured or retained by a governing board pursuant to this section is retained by the governing board.

(m) Each governing board is authorized, but not required, to implement subsections (f), (g) and (h) of this section.

If a governing board elects to implement subsection (g) of this section, the following conditions apply:

(1) The governing board makes the determination regarding any additional operation or service which is appropriate for consolidation without input from the council or commission;

(2) The governing board sets the fee charged to the governing board of the institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing the service and is not subject to approval by the council or commission; and
(3) The governing board may not implement this subdivision in a manner which supersedes the requirements established in section twelve, article three-c of this chapter.

(n) The governing boards of the exempted schools, respectively, each shall promulgate a rule on purchasing procedures in accordance with section six, article one of this 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.

(a) Each governing board shall fix tuition and other fees for each academic term for the different classes or categories of students enrolling at the state institution of higher education under its jurisdiction, including the fixing of different tuition and fees for online course delivery, and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.

(b) A governing board may establish a single special revenue account for each or all of the following classifications of fees:

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt
service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from the accounts, a governing board may expend funds from each special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(5) If a governing board of an Exempted School establishes a single special revenue account for all the foregoing classifications of fees in this subsection, the governing board must account for each classification of fee separately in their internal accounting system.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student’s attorney to perform legal services for students in civil matters at the institutions. The legal services are limited to those types of cases, programs or services approved by the president of the institution where the legal services are to be performed.

(d) By October 1, 2011, the commission and council each shall propose a rule for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees by the governing boards under their respective jurisdictions.

(e) The schedule of all tuition and fees, and any changes in the schedule, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of the schedule and changes.
(f) The governing boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term. A governing board shall require by rule all fees be due not later than the end of the academic term, and shall provide for appropriate measures to provide for collections of fees past due.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with this subsection.

(3) The governing boards may establish rates applicable to tuition and fees for online course delivery without regard to the limitations contained in this subsection.

(g) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.
(3) If a governing board determines that a student’s finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis whether the finances of a student are affected adversely.

(4) A governing board may charge interest or fees for any deferred or installment payment plans.

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution’s elected student government. The fee may not be used to finance litigation against the institution.

(i) Governing boards shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rules proposed by the commission and council pursuant to this section. The tuition rules shall address the following areas:

(1) Providing a basis for establishing nonresident tuition and fees;

(2) Allowing governing boards to charge different tuition and fees for different programs;

(3) Authorizing a governing board to propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions: Provided, That the governing boards for the exempted schools may authorize a mandatory auxiliary fee without seeking approval of the commission:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students
below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(4) Establishing methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for students in all community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission or council upon any governing board based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The governing boards shall report annually to the commission or council on the numbers of nonresidents and any other enrollment information the commission or council may request.

(k) Tuition and fee increases of the governing boards, except the exempted schools, are subject to rules adopted by the commission and council pursuant to this section and in accordance with article three-a, chapter twenty-nine-a of this code. The commission or council, as appropriate, shall
examine individually each request from a governing board, 
including the exempted schools, for an increase and make 
its determinations as follows:

157  (1) A tuition and fee increase for resident students 
proposed by a governing board requires the approval of the 
commission or council, as appropriate, for any tuition and 
fee increase greater than ten percent in any one year or 
where the increase would be more than seven percent per 
year, averaged over a rolling three year period calculated by 
averaging the proposed increase with the increase for the 
immediate two previous years;

162  (2) In determining whether to approve or deny a 
governing board’s request for a tuition and/or fee increase 
for resident students greater than the increases granted 
pursuant to subdivision (1) of this subsection, the 
commission or council shall determine the progress the 
governing board has made toward meeting the conditions 
outlined in this subsection and shall make this determination 
the predominate factor in its decision. The commission or 
council shall consider the degree to which each governing 
board has met the following conditions:

175  (A) Maximizes resources available through nonresident 
tuition and fee charges to the satisfaction of the commission 
or council;

188  (B) Consistently achieves the benchmarks established in 
the compact pursuant to article one-d of this chapter or the 
master plan for exempted schools in article two-a of this 
chapter, including the provisions of article one-d required in 
the master plan;

199  (C) Continuously pursues the statewide goals for post-
secondary education;

208  (D) Demonstrates to the satisfaction of the commission 
or council that an increase will be used to maintain high-
quality programs at the institution;
(E) Demonstrates to the satisfaction of the commission or council that the governing board is making adequate progress toward achieving the goals for education established by the Southern Regional Education Board;

(F) Demonstrates to the satisfaction of the commission or council that the governing board has considered the average per capita income of West Virginia families and their ability to pay for any increases; and

(G) Demonstrates to the satisfaction of the commission or council that base appropriation increases have not kept pace with recognized nationwide inflationary benchmarks.

(3) This section does not require equal increases among governing boards nor does it require any level of increase by a governing board.

(4) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for approving or denying each request as determined using the criteria established in this subsection.

§18B-10-1c. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) “Auxiliary capital fees” means charges levied on students to support debt service, capital projects and campus maintenance and renewal for the auxiliary facilities of the institutions;

(b) “Auxiliary fees” means charges levied on all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales and service revenue from entities that exist predominately to furnish goods or services to students, faculty or staff such as residence halls, faculty
and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers;

(c) “Full-time graduate student” means a graduate student who is enrolled for nine or more credit hours in a regular term;

(d) “Full-time undergraduate student” means an undergraduate student who is enrolled for twelve or more credit hours in a regular term;

(e) “Required educational and general capital fees” means:

(1) Charges levied on all students to support debt service of systemwide bond issues; and

(2) Charges levied on all students to support debt service, capital projects and campus maintenance and renewal for an institution’s educational and general educational facilities; and

(f) “Tuition and required educational and general fees” means:

(1) Charges levied on all students of that class or category to support educational and general program services; and

(2) Optional charges levied for education and general services collected only from students using the service or 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.

(a) This section and any rules adopted by the commission, council or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code,
govern the collection, disposition and use of the capital and auxiliary capital fees authorized by section one of this article. The statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) Fees for full-time students. — The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix the fees at higher rates for students who are not residents of this state.

(c) Fees for part-time students. — For all part-time students and for all summer school students, the governing boards shall impose and collect the fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is continued in the State Treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of the following:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from the students pursuant to section one of this article. The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which the fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this
section to finance or fund on a cash basis, in whole or in part, in combination with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest in land;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for the buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at the state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.

(f) The commission, when singly or jointly requested by the council or governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in the special funds for the payment of the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds shall be a prior and superior charge on the special funds over the use of any of the moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any expenditures from the special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to
meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in the order of priority agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the Governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the ten-year campus development plan approved by the governing board pursuant to section three, article nineteen of this chapter.

(g) The revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in the special funds.

(h) The issuance of the revenue bonds by schools other than the exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds and by the commission. The revenue bonds issued by schools other than the exempted schools shall be signed by the Governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State,
and the coupons attached to the revenue bonds shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the commission or governing board determines is in the best interests of the state.

(i) The issuance of the revenue bonds by exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding one hundred years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds. The revenue bonds shall be signed by the Governor and the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the governing board determines is in the best interests of the state.

(j) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in the trust agreements or the resolutions authorizing the issuance of the bonds may enter into valid and legally binding covenants with the holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of the revenue bonds, the moneys in the special funds, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission.
or governing boards under this section; as to the maintenance or revision of the amounts of the fees; as to the extent to which swap agreements, as defined in subsection (h), section two, article two-g, chapter thirteen of this code shall be used in connection with the revenue bonds, including such provisions as payment, term, security, default and remedy provisions as the commission considers necessary or desirable, if any, under which the fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of the revenue bonds.

(k) After the issuance of any revenue bonds, the fees at the state institutions of higher education pledged to the payment of the revenue bonds may not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued. The revenue bonds are and constitute negotiable instruments under the Uniform Commercial Code of this state; together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the revenue bonds may not be considered to be obligations or debts of the state and the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(l) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. The special revenue fund in the State Treasury known as the Community and Technical College Capital Improvement Fund into which shall be deposited the amounts specified in subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code is continued. All amounts deposited in the fund shall be pledged to the
restitution of the principal, interest and redemption
premium, if any, on any revenue bonds or refunding revenue
bonds authorized by the commission for community and
technical college capital improvements or used by the
council on a cash basis as provided under subdivision (4),
subsection (j), section eighteen, article twenty-two, chapter
twenty-nine of this code for community and technical
college capital improvements or capital projects.

(m) Funding of systemwide and campus-specific
revenue bonds under any other section of this code is
continued and authorized pursuant to the terms of this
section. Revenues of any state institution of higher
education pledged to the repayment of any revenue bonds
issued pursuant to this code shall remain pledged.

(n) Any revenue bonds for state institutions of higher
education proposed to be issued under this section or other
sections of this code first must be approved by the Governor
and:

(1) Approved by the governing board for revenue bonds
issued by the exempted schools;

(2) Confirmed by the commission, for revenue bonds
issued by institutions under the jurisdiction of the
commission, or

(3) Approved by the council and the commission, for
revenue bonds issued by institutions under the jurisdiction
of the council.

(o) Revenue bonds issued pursuant to this code may be
issued by the commission or governing boards, either singly
or jointly.

(p) Fees pledged for repayment of revenue bonds
issued under this section or article twelve-b, chapter
eighteen prior to or after the effective date of this section
shall be transferred to the commission in a manner
prescribed by the commission. The commission may
transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

(q) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section and section one of this article are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its predecessors or any institution, adopted prior to the effective date of this section, the fees shall remain in effect in amounts not less than the amounts in effect as of that date, until the revenue bonds payable from any of the fees have been paid or the pledge of the fees is otherwise legally discharged.


Except as may be provided for in any bond resolution in effect, funds in the State Treasury heretofore collected from any of the sources defined in the foregoing sections shall remain in the State Treasury for use by the institution where collected. Any interest revenue generated by a special student fee account shall only be expended at or for the institution where such fee was collected. Exempted schools may transfer and deposit all fees and funds collected under this article into a single special revenue account: Provided, That if the governing board of an exempted school does transfer and deposit all such fees and funds into a single special revenue account, the governing board shall account for each classification of fees and funds separately in their internal accounting system.
ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.
§18B-19-1. Legislative findings and intent.

(a) The Legislature makes the following findings:

1. State institutions of higher education vary widely in the conditions of their facilities infrastructure.

2. State institutions of higher education vary widely in their ability to incur debt for capital improvements. It is nearly impossible for community and technical colleges and some smaller baccalaureate institutions to fund significant capital improvements in the absence of state funding.

3. A student enrolled at a community and technical college that previously was administratively linked to another state institution of higher education pays substantially higher tuition and mandatory fees than a student enrolled at a freestanding community and technical college. This cost discrepancy is due in large part to the significantly higher capital fees charged to these students to pay debt service for capital improvements.

4. The substantial amount of capital fees that students must pay at the institution level contributes significantly to the poor grade the state receives in the category of “Affordability” in Measuring Up: The National Report Card on Higher Education.

5. It is beneficial for the state to provide additional ongoing capital funding to reduce the obligation of students and parents to bear the cost of higher education capital improvements and facilities maintenance.

6. West Virginia is one of only a few states that does not address higher education capital improvements and facilities maintenance needs through a statewide plan.
(7) State funding for capital improvements should align with state and system higher education goals, objectives and priorities as set forth in article one-d of this chapter.

(8) State capital funding should focus primarily on educational and general capital improvements, not auxiliary capital improvements.

(9) Renovations of existing buildings sometimes deserve greater consideration for state funding than new construction. However, new construction may deserve greater consideration than renovation when a state or system goal, objective or priority is implicated, as well as when renovation would be financially inefficient.

(10) As the Legislature increases funding for new educational and general capital improvements and major renovations, and supplants existing educational and general debt, institutions should target funds for maintenance and deferred maintenance needs.

(11) If community and technical colleges are to keep the cost of education affordable, they cannot be expected to fund maintenance obligations entirely from student capital fees.

(12) The commission and council should scrutinize carefully all requests from institutions to incur additional debt in order to determine their effect on institution debt capacity and the impact that incurring additional debt will have on students.

(13) State institutions of higher education ultimately should target adequate state capital contributions and capital fees to address maintenance and deferred maintenance needs.

(14) Until institutions are able to generate sufficient revenue to address maintenance and deferred maintenance needs, the Legislature should provide periodic funding to assist institutions in addressing these needs. Funding
priority should be given to projects that address building
code requirements and critical maintenance needs.

(15) In supporting future high priority capital needs, the
Legislature, commission and council should not reward
institutions with state funding if they neglect to address
facilities maintenance needs or do not prudently manage
their capital resources.

(16) Once an institution’s capital development plan has
been approved by the governing board and confirmed by the
commission or approved by the council, as appropriate,
project priorities should not change significantly from year
to year.

(17) Commission and council staff should participate in
managing capital projects at smaller institutions if the
smaller institution lacks the expertise necessary to plan,
design and complete projects at or under budget.

(b) The intent of the Legislature relating to this article
includes, but is not limited to, the following:

(1) Dedicated state funding sources shall be designated
to finance construction and renovation of educational and
general facilities at state institutions of higher education
from time to time;

(2) Capital project lists submitted by institutions to the
commission or council, as appropriate, and capital project lists
submitted by the commission and council to the state budget
office, Legislative Oversight Commission on Education
Accountability, and Joint Committee on Government and
Finance for consideration for state funding shall be reasonable
requests that align with state and system goals, objectives and
priorities and ones which reasonably could be funded if
approved;

(3) As the Legislature increases its responsibility for
financing new educational and general facilities and major
renovations, the commission, council and institutions shall
ensure that sufficient capital revenues are available for maintenance and that the facilities are maintained adequately;

(4) Ongoing state funding shall be dedicated to supplement capital fees available for maintenance at community and technical colleges; and

(5) Once a system capital plan is in place, institutions shall set aside adequate funding annually to ensure that ongoing facilities maintenance needs are met.


(a) By December 31, 2017, the commission and council, jointly or separately, shall develop a system capital development oversight policy for approval by the Legislative Oversight Commission on Education Accountability. At a minimum the initial oversight policy shall include the following:

(1) System goals for capital development;

(2) An explanation of how system capital development goals align with state goals, objectives and priorities established in articles one and one-d of this chapter and with system master plans;

(3) A description of how the commission and council will prioritize their recommendations for capital projects for state funding based on their ability to further state goals, objectives and priorities and system capital development goals;

(4) A building renewal formula to calculate a dollar benchmark that shall be collected annually and invested in facilities to minimize deferred maintenance and to provide the commission and council objective information to determine if the investments in maintenance are occurring;
(5) A process for governing boards to follow in developing and submitting campus development plans to the commission or council, as appropriate, for approval by the council or for confirmation by the commission, as appropriate; and

(6) A process for governing boards to follow to ensure that sufficient revenue is generated for and applied toward facilities maintenance.

(b) The system capital development plan shall be developed in consultation with governing boards and appropriate institution staff. Before approving the capital development plan, the commission and council shall afford interested parties an opportunity to comment on the plan through a notice-and-comment period of at least thirty days.

(c) The commission and council shall update its system capital development plan at least once in each ten-year period.

§18B-19-4. Campus development plans.

(a) Each governing board shall update its current campus development plan and submit the updated plan to the commission or council, as appropriate, for approval by the council or confirmation by the commission, as appropriate, except that confirmation is not required by the commission for the exempted schools. A campus development plan shall be adopted by each governing board for a ten-year period and shall align with criteria specified in the following sources:

(1) The system capital development oversight policy;

(2) The institution’s approved master plan and compact; and

(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;
(11) Estimates of the timing, phasing and projected costs associated with individual projects;

(12) If an institution has multiple campuses in close proximity, a delineation of how the campuses should interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible;

(13) A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public with respect to its implementation; and

(14) Any other requirement established by the commission and council in the rules required by section seventeen of this article.

(c) Campus development plans shall incorporate all current and proposed facilities, including educational and general and auxiliary facilities.

(d) Not later than the next regularly scheduled meeting of the commission or council, as applicable, following the fifth anniversary date after the commission confirms or council approves, as appropriate, the development plan of a governing board the governing board shall report on the progress made in the first five years to implement the campus development plan for each campus under its jurisdiction. In addition, the governing board shall report on its plans to implement the remaining five-year period of its campus development plan.

(e) Each governing board shall update its campus development plan at least once during each ten-year period and any update is subject to the confirmation of the commission or approved by the council, as appropriate.

(f) Except for the governing boards of the exempted schools, a governing board may not implement a campus development plan or plan update that has not been
confirmed by the commission or approved by the council, as appropriate.


(a) The commission and council each shall submit a prioritized capital appropriation request annually to the state budget office as required by article two, chapter eleven-b of this code consisting of major capital projects and maintenance projects.

(b) The commission and council each shall develop a process for governing boards to follow in submitting a list of major educational and general capital projects so that a prioritized major capital project list, prepared by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) The governing board’s major capital project list shall include the following items:

(A) Projects identified in the governing board’s campus development plan or plans. A project may not be included which is not contained in the plan confirmed by the commission or approved by the council, as appropriate, except when extraordinary circumstances otherwise warrant;

(B) A current estimate of each project’s estimated cost accounting for inflation since completion of the campus development plan. The size and scope of the project may not change unless the campus development plan has been updated and approved by the council or confirmed by the commission, as appropriate, as provided in section three of this article; and

(C) Any additional information required to be provided by the commission, council or state budget office.

(2) The commission and council each shall rank the major capital projects submitted by the governing boards
according to priority consistent with the criteria outlined in
the system capital development plan. The council and
commission may not submit to the state budget office a
request for an institution which the commission or council
determines reasonably could not secure funding through the
appropriation process during the following fiscal year.

(c) The commission and council each shall develop a
process for governing boards to follow in submitting a list
of major maintenance projects so that a prioritized
maintenance project list, prepared by the commission or
council, as appropriate, may be submitted to the state budget
office by the applicable deadline.

(1) Annually, the commission and council, as
appropriate, shall provide each governing board a
recommended building renewal calculation that identifies
the funds that should be collected and invested in its
buildings and facilities during the next fiscal year to
maintain them and minimize deferred maintenance.

(2) As soon as it receives the building renewal
calculation, each governing board shall make realistic
revenue estimates of the funds available for maintenance
projects from educational and general capital fees, from
auxiliary and auxiliary capital fees and from any other
revenue that may be used for maintenance projects, as well
as any anticipated reserves. The governing boards then shall
identify and submit proposed major maintenance projects,
consistent with its campus development plan or plans, to be
funded from these revenues.

(3) The commission and council each shall report to the
Legislative Oversight Commission on Education
Accountability on the revenue available to governing boards
for educational and general and auxiliary maintenance
projects, as well as any shortfalls based on building renewal
formula calculation, and major maintenance projects that
institutions propose to undertake during the upcoming fiscal
year.
(4) The commission shall work with institutions under its jurisdiction to ensure that adequate funds are generated to fund maintenance and build adequate reserves from educational and general and auxiliary capital fees and other revenue consistent with the building renewal formula. The Legislature recognizes that it may take several years for this to be accomplished fully.

(5) The council shall work with the Legislature and institutions under its jurisdiction to ensure that a combination of appropriated and nonappropriated revenue is available to fund maintenance and build adequate reserves at community and technical colleges consistent with the building renewal formula.

§18B-19-6. Capital project financing.

(a) The commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with section eight, article ten of this chapter.

(b) A governing board may seek funding for and initiate construction or renovation work for major projects only if contained in a campus development plan approved by the council or confirmed by the Commission: Provided, That this subsection (b) shall not apply to the governing boards of the exempted schools.

(c) A governing board may fund capital improvements on a cash basis, through bonding or through notes or another financing method that is approved by the commission and by the council, if appropriate: Provided, That the exempted schools shall not be required to get the approval of the commission.

(1) If the cost of an improvement project for any institution under the jurisdiction of the council, exceeds $1 million, the governing board first shall obtain the approval of the council, as appropriate. If the cost of an improvement project at an institution under the jurisdiction of the council
commission, other than the exempted schools, exceeds $3 million, the governing board shall first obtain the approval of the commission.

(2) Prior to approving bonding or any alternative financing method for any institution other than the exempted schools, the commission, and council if appropriate, shall evaluate the following issues:

(A) The institution’s debt capacity and ability to meet the debt service payments for the full term of the financing;

(B) The institution’s capacity to generate revenue sufficient to complete the project;

(C) The institution’s ability to fund ongoing operations and maintenance;

(D) The impact of the financing arrangement on students; and

(E) Any other factor considered appropriate.

(d) A governing board shall notify the Joint Committee on Government and Finance at least thirty days before beginning construction or renovation work on any capital project in excess of $1 million.

(e) The commission may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

(f) Any fee or revenue source pledged prior to the effective date of this section for payment of any outstanding debt remains in effect until the debt is fully repaid or refunded.

§18B-19-7. Capital project management.

(a) The commission, council and governing boards, as responsibility is otherwise assigned herein, shall ensure that capital funds are spent appropriately and that capital
projects are managed effectively. Project management shall be conducted in all respects according to sound business practices and applicable laws, and rules.

(b) The commission shall employ a sufficient number of competent facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed. By December 31, 2011, and continuing thereafter, at least one employee shall be Leadership in Energy and Environmental Design (LEED) certified.

(c) A governing board under the jurisdiction of the commission is exempt from the provisions of subsections (e) and (f) of this section seven of this article, and its capital projects management shall be governed by the provisions of subsection (d) of this section regardless of the rolling five year construction expenditures, if it meets each of the following criteria:

(1) Employs at least one Leadership in Energy and Environmental Design (LEED) certified administrator; and

(2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the International Facility Management Association or employs at least one Project Management Professional (PMP) as certified by the Project Management Institute.

(d) An institution that has entered into construction contracts averaging more than $50 million over the most recent rolling five-year period is responsible for capital project management at that institution if it meets the following additional conditions:

(1) The governing board shall employ a facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed and, by December 31, 2011, and continuing thereafter, at least one
of these employees shall be Leadership in Energy and Environmental Design (LEED) certified;

(2) The governing board shall promulgate and adopt a capital project management rule in accordance with section six, article one of this chapter. The capital project management rule shall include at least the following items:

(A) Delineation of the governing board’s responsibilities with respect to capital project management and the responsibilities delegated to the institution’s president;

(B) A requirement for the use of standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project;

(C) The governing board’s requirements for the following procedures:

(i) Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board’s master plan, compact and campus development plan;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering and construction contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.
(3) The institutional capital project management rule shall be filed with the commission no later than one hundred eighty days following the effective date of the rule required of the commission and council in section seventeen of this article.

(4) The commission may review or audit projects greater than $5 million periodically to ascertain that appropriate capital project management practices are being employed.

(e) For institutions that have entered into construction contracts averaging at least $20 million, but not more than $50 million, over the most recent rolling five-year period:

(1) The governing board, with assistance as requested from the commission, shall manage all capital projects if the governing board meets the following conditions:

(A) Employs at least one individual experienced in capital project development and management; and

(B) Promulgates and adopts a capital project management rule in accordance with section six, article one of this chapter that is approved by the commission. The capital project management rule may be amended at the discretion of the governing board, but amendments shall be submitted to the commission for review and approval before becoming effective.

(2) The capital project management rule of the governing board shall include at least the following items:

(A) Delineation of the governing board’s responsibilities with respect to capital project management and the responsibilities delegated to the institution’s president;

(B) A requirement for the use of the state’s standard contract documents for architectural, engineering,
construction, construction management and design-build services as appropriate to a particular project; and

(C) The governing board’s requirements for the following procedures:

(i) Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board’s master plan, compact and campus development plan;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering, construction and other capital contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.

(3) If an institution does not meet the provisions of this subsection, the commission shall manage all capital projects exceeding $1 million.

(4) The commission staff shall review and audit periodically all projects greater than $1 million to ascertain that appropriate project management practices are being employed. If serious deficiencies are identified and not addressed sufficiently within ninety days, commission staff may assume management of all projects.

(f) For institutions that have entered into construction contracts averaging less than $20 million over the most recent rolling five-year period and for all community and technical colleges, the commission and council shall manage capital projects exceeding $1 million. In the rule
required by section seventeen of this article, the commission and council, as appropriate, shall adopt procedures to afford participation by the governing boards and staff in the planning, development and execution of capital projects.


(a) The commission and council jointly shall develop and maintain a higher education facilities information system, except for the exempt schools. The higher education facilities information system shall serve as a vehicle for carrying out the following functions:

(1) Acquisition of statewide data;

(2) Analysis of space use and classification based on nationally recognized standards and measurements to facilitate comparisons among post-secondary education institutions within the state and in the region and nation; and

(3) Other purposes as determined by the commission and council consistent with facilitating policy analysis without burdening or interfering unnecessarily with the governance responsibilities which are placed upon the governing boards.

(b) At a minimum the higher education facilities information system shall serve the following purposes:

(1) Develop and maintain a statewide inventory of higher education facilities, including those acquired by long-term lease, lease-purchase or other arrangement whereby the institution has long-term beneficial use. The inventory shall include, but is not limited to, the institution and campus location of the facility, the construction date, the original cost, square footage, floor plans, type of construction, ownership status, the purposes for which it is used, the current replacement cost and any other data the commission and council consider appropriate, consistent with the provisions of the foregoing subsection (a);
(2) Develop and maintain an inventory of all rooms within each facility, which includes, but is not limited to, the room number, the square footage, room usage, number of student stations and any other data the commission and council consider appropriate, consistent with the provisions of the foregoing subsection (a);

(3) Provide a vehicle for institutions to submit capital appropriation requests to the commission and council;

(4) Provide information on major institutional capital projects, including major maintenance and deferred maintenance projects; and

(5) Provide information on facilities needed to calculate the building renewal formula.

(c) The commission and council shall establish benchmarks for classroom and class laboratory use including an analysis of utilization for the fall and spring semesters of each academic year. The efficient use of classrooms and class laboratories is a factor in determining whether an institution needs additional classroom and laboratory facilities.

(d) Each governing board and any institution under its jurisdiction shall participate and cooperate with the commission and council in all respects in the development and maintenance of the higher education facilities information system.

(e) The higher education facilities information system may be used for other purposes set forth by the commission and council in the rules required by section seventeen of this article, consistent with the provisions of the foregoing subsection (a).

§18B-19-10. Authorization to sell and transfer property; use of proceeds.
(a) Notwithstanding any other provision of law or this code to the contrary, the commission, council and governing boards each may sell, lease, convey or otherwise dispose of all or part of any real property that it owns, either by contract or at public auction, and shall retain the proceeds of the transaction.

The commission, council and governing boards may not sell, convey or otherwise dispose of any real property without first performing the following steps:

(1) Providing for property appraisal by two independent licensed appraisers. The property may not be sold for less than the average of the two appraisals;

(2) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

(3) Holding a public hearing on the issue in the county in which the real property is located;

(4) For real property with a proposed sale price of $50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the Legislature, and

(5) In the case of the commission, notifying the Joint Committee on Government and Finance.

(b) The commission, council or a governing board may not lease real property for an annual amount of greater than $50,000 without satisfying the obligations of subdivisions (2) to (4) of subsection (a) of this section.

(c) The commission, council or a governing board shall deposit the net proceeds from the sale, conveyance or other disposal of real property into a special revenue account in
the State Treasury to the credit of the commission, council, or governing board that sold, conveyed or otherwise disposed of the real property.


(a) The commission or council may enter into lease-purchase agreements for capital improvements, including equipment, on behalf of, or for the benefit of, a state institution of higher education, the commission or council.

(b) After the commission or council, as appropriate, has granted approval for a lease-purchase agreement by a governing board, the board may enter into a lease-purchase agreement for capital improvements, including equipment.

(c) The governing boards of the exempted schools may enter into lease-purchase agreements without seeking the approval of the commission. The governing boards, subject to the jurisdiction of the commission, may enter into lease-purchase agreements of less than $1.5 million, without obtaining approval of the commission.

(d) A lease-purchase agreement constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the commission, council or the institution and shall be cancelable at the option of the commission, council, or governing board at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision of the state. The facts shall be plainly stated in any lease-purchase agreement.

(e) A lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee.
and the approval of the agreement as to form by the Attorney General. Proposals for any agreement shall be requested in accordance with the requirements of this section and rules of the commission and council. In addition, any lease-purchase agreement that exceeds $100,000 total shall be approved as to form by the Attorney General.

(f) The interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.


(a) In addition to the requirements otherwise provided in this article, any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting from these transactions, shall be approved by the commission or council, as appropriate, and provided to the Joint Committee on Government and Finance for prior review, if the transaction exceeds $1 million: Provided, That the exempted schools shall not be required to get the approval of the commission.

(b) Notwithstanding any provision of this code to the contrary, any acquisition, bequest, donation or construction of new buildings, office space or grounds exceeding $1 million in appraised value or requiring $1 million in repairs and renovation or lease payments over the lifetime of the lease, made or accepted by an institution’s research corporation established by article twelve of this chapter or
an affiliated foundation of an institution under the
jurisdiction of the council, shall be approved by the council.

(c) The commission, council and each governing board
shall provide the following to the Joint Committee on
Government and Finance:

(1) A copy of any contract or agreement to which it is a
party for real property if the contract or agreement exceeds
$1 million; and

(2) A report setting forth a detailed summary of the
terms of the contract or agreement, including the name of
the property owner and the agent involved in the sale.

(d) The copy and report required by subsection (b) of this
section shall be provided at least thirty days before any sale,
exchange, transfer, purchase, lease-purchase, lease or rental of
real property, refundings of lease-purchases, leases or rental
agreements, construction of new buildings, and any other
acquisition or lease of buildings, office space or grounds.

(e) A contract or agreement that is for the lease
purchase, lease or rental of real property, where the costs of
real property acquisition and improvements are to be
financed, in whole or in part, with bond proceeds, may
contain a preliminary schedule of rents and leases for
purposes of review by the committee.

(f) For renewals of contracts or agreements required by
this section to be reported, the commission, council or
governing board shall provide a report setting forth a
detailed summary of the terms of the contract or agreement,
including the name of the property owner.

(g) The Joint Committee on Government and Finance
shall meet and review any contract, agreement or report
within thirty days of receipt.

(h) Each governing board shall provide to the
commission or council, as appropriate, a copy of any
contract or agreement submitted to the Joint Committee on
Government and Finance pursuant to this section.

(a) Notwithstanding any other provision of this code to the contrary, a governing board may sell any building that is on unencumbered real property to which the board holds title and may lease back the same building if the governing board obtains approval of the council or confirmation by the commission, as appropriate, before incurring any obligation: Provided, That the exempted schools shall not be required to obtain such approval or confirmation of the commission. The board shall deposit the net proceeds of the transaction into a special revenue account in the State Treasury to be appropriated by the Legislature for the use of the institution at which the real property is located. Prior to such action, the board shall take the following steps:

(1) Provide for the property to be appraised by two licensed appraisers. The board may not sell the property for less than the average of the two appraisals;

(2) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

(3) Holding a public hearing on the issue in the county in which the real property is located;

(4) For real property with a proposed sale price of $50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the Legislature, and

(5) Retain independent financial and legal services to examine fully all aspects of the transaction.

(b) The sale may be made only to a special purpose entity that exists primarily for the purpose of supporting the institution at which the building is located.

§18B-19-19. Applicability to certain institutions.
The governing boards of the exempted schools each may, without obtaining approval of the commission, take any action described or set forth in this article that otherwise would require the approval or confirmation of the commission. The respective governing board shall provide notice of the action to the commission. If the commission requests additional information relevant to the action from the respective governing board, the governing board shall 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.]
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.

(a) The commission, created by section one of this article, shall employ a Chancellor for Higher Education who is the Chief Executive Officer of the Commission and who serves at its will and pleasure.

(b) The commission shall set the qualifications for the position of Chancellor and, when a vacancy occurs, shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

1. Possesses an excellent academic and administrative background;
(2) Demonstrates strong communication skills;

(3) Has significant experience and an established national reputation as a professional in the field of higher education;

(4) Is free of institutional or regional biases; and

(5) Holds or retains no other administrative position within a system of higher education while employed as chancellor.

c) The commission shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract not to exceed three years. At the end of each contract period, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level.

d) When filling a vacancy in the position of chancellor, the commission shall enter into an initial employment contract for one year with the candidate selected. At the end of the initial contract period, and each contract period thereafter, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the chancellor.

e) The commission sets the chancellor’s salary. The salary may not exceed by more than twenty percent the average annual salary of chief executive officers of state systems of higher education in the states that comprise the membership of the Southern Regional Education Board.

(f) The commission may employ a Vice Chancellor for Health Sciences who serves at the will and pleasure of the commission. The Vice Chancellor for Health Sciences shall coordinate the West Virginia University School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine and also shall provide assistance to the governing boards on matters
related to medical education and health sciences. The Vice Chancellor for Health Sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a vacancy in the office of Vice Chancellor of Health Sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee.

(g) The commission shall employ a Vice Chancellor for Administration pursuant to section two, article four of this chapter.

(h) The commission may employ a Vice Chancellor for State Colleges who serves at the will and pleasure of the commission. At a minimum, the Vice Chancellor for State Colleges shall perform the following duties:

(1) Provide assistance to the commission, the chancellor and the state colleges on matters related to or of interest and concern to these institutions;

(2) Advise, assist and consult regularly with the presidents and governing boards of each state college;

(3) Serve as an advocate and spokesperson for the state colleges to represent them and to make their interests, views and issues known to the chancellor, the commission and governmental agencies;

(4) Perform all duties assigned by the chancellor, the commission and state law.

In addition, the Vice Chancellor for State Colleges shall provide staff assistance to the presidents and governing boards to the extent practicable.

(i) On behalf of the commission, the chancellor may enter into agreements with any state agency or political subdivision of the state, any state institution of higher education or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the commission or by state law.
(j) The chancellor is responsible for the daily operations of the commission and has the following responsibilities relating to the commission and the governing boards under its jurisdiction:

(1) To carry out policy and program directives of the commission;

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a, article one and article one-d of this chapter, and in the compacts;

(3) To prepare and submit to the commission for its approval the proposed budget of the commission including the offices of the chancellor and the vice chancellors;

(4) To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. The commission and the council, either separately or jointly as appropriate, are responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

(5) To consult with institutions on human relations policies and rules;

(6) To perform all other duties and responsibilities assigned by the commission or by state law.

(k) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

(l) The chancellor, with the commission, advises the Legislature on matters of higher education in West Virginia. The chancellor shall work closely with the Legislative Oversight Commission on Education Accountability and
with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals, objectives and priorities for higher education that the Legislature has established by law.

(m) The chancellor may design and develop for consideration by the commission new statewide or region-wide initiatives in accordance with the goals set forth in section one-a, article one and article one-d of this chapter, and the public policy agenda articulated by the commission. In those instances where the initiatives to be proposed have a direct and specific impact or connection to community and technical college education as well as to baccalaureate and graduate education, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education shall design and develop the initiatives jointly for consideration by the commission and the council.

(n) To further the goals of cooperation and coordination between the commission and the State Board of Education, the chancellor serves as an ex officio, nonvoting member of the state board. The chancellor shall work closely with members of the State Board of Education and with the State Superintendent of Schools to assure that the following goals are met:

(1) Development and implementation of a seamless kindergarten-through-college system of education; and

(2) Appropriate coordination of missions and programs.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.

(a) The council and commission each shall employ a chancellor to assist in the performance of their respective duties and responsibilities subject to the following conditions:
1 (1) Each chancellor serves at the will and pleasure of the hiring body.

2 (2) Neither chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor.

3 (3) Each chancellor shall carry out the directives of the body by whom employed and shall collaborate with that body in developing policy options.

4 (4) The commission is responsible to the council and the Chancellor for Community and Technical College Education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal services, research, technology, computing, finance and facilities, academic affairs, telecommunications, human resources, student services and any other general areas the council considers to be essential to the exercise of its legal authority. The services are provided under the general supervision of the Vice Chancellor for Administration.

5 (5) For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and staff employed by the governing boards under their respective jurisdictions.

6 (b) In addition to the staff positions designated in subdivision (4), subsection (a) of this section, and section five, article one-b of this chapter, the Vice Chancellor for Administration, employed pursuant to section two of this article, serves the offices of the chancellors to discharge jointly the duties and responsibilities of the council and commission.
(c) Suitable offices for the Vice Chancellor of Administration and other staff shall be provided in Kanawha County.

§18B-4-2a. Development of benefit programs; assistance to organizations.

The chancellor or a qualified designee shall:

1. Chair the Job Classification Committee and the Compensation Planning and Review Committee established by sections four and five, article nine-a of this chapter;

2. Assume responsibility for coordinating retirement benefits programs for all employees, including designing these programs, and for supporting each higher education organization in implementing the programs;

3. Assist, as requested by an organization, organizations with classification and/or compensation programs for faculty and/or nonclassified employees, including, as appropriate, design and implementation of the programs; and

4. As requested by organizations, assist with carrying out the following duties related to training and development:

   A. Analyzing and determining training needs of organization employees and formulating and developing plans, procedures and programs to meet specific training needs and problems.

   B. Developing, constructing, maintaining and revising training manuals and training aids or supervising development of these materials by outside suppliers;

   C. Planning, conducting and coordinating management inventories, appraisals, placement, counseling and training;

   D. Coordinating participation by all employees in training programs developed internally or provided by outside contractors; and
(E) Administering and analyzing annual training and development needs surveys. The survey may coincide with the completion of the annual performance review process.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Legislative intent and purpose.

(a) The intent of the Legislature in enacting this article and articles eight, nine and nine-a of this chapter is to establish basic human resources policies applicable to public higher education capable of, but not limited to, assisting the governing boards in meeting the following objectives:

1. Implementing contemporary programs and practices to reward and incentivize performance and enhance employee engagement;

2. Providing benefits to the citizens of the State of West Virginia by supporting the public policy agenda as articulated by state policymakers;

3. Assuring fiscal responsibility by making the best use of scarce resources;

4. Promoting fairness, accountability, credibility, and transparency in personnel decision making;

5. Providing for job requirements and performance standards for classified staff positions with annual job performance evaluations for classified staff, and provisions for job performance counseling when appropriate.

6. Reducing or, wherever possible, eliminating arbitrary and capricious decisions affecting employees of higher education organizations as defined in section two, article nine-a of this chapter;

7. Creating stable, self-regulating human resources policies capable of evolving to meet changing needs;
(8) Providing for institutional flexibility with meaningful accountability;

(9) Adhering to federal and state laws;

(10) Adhering to duly promulgated and adopted rules; and

(11) Enhancing the sharing of best practices throughout the state higher education system.

(12) Providing current, reliable data to governing boards, the commission, the council, the Governor and the Legislature to inform the decision-making process of these policymakers.

(b) To accomplish these goals, the Legislature encourages organizations to pursue a human resources strategy which provides monetary and nonmonetary returns to employees in exchange for their time, talents and efforts to meet articulated goals, objectives and priorities of the state, the commission and council, and the organization. The system should maximize the recruitment, motivation and retention of highly qualified employees, promote satisfaction and engagement of employees with their jobs, promote job performance and achieve desired results.

(c) It is the intent of the Legislature to establish a human resources strategy that is fair, accountable, credible, and transparent. In recognition of the importance of these qualities, the human resources strategy outlined in this article, together with articles eight and nine-a of this chapter, is designated and may be cited as “FACT for Higher Education”.

(d) It is the intent of the Legislature to require each higher education organization to achieve full funding of the minimum salary levels for classified employees established in section six, article nine-a of this chapter.

§18B-7-2. Definitions.
For the purposes of this article and articles eight, nine and nine-a of this chapter, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

1. “Benefits” means programs that an employer uses to supplement the cash compensation of employees and includes health and welfare plans, retirement plans, pay for time not worked and other employee prerequisites.

2. “Compensation” means cash provided by an employer to an employee for services rendered.

3. “Compensatory time” and “compensatory time off” mean hours during which the employee is not working, which are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation and for which the employee is compensated at the employee’s regular rate of pay.

4. “Employee classification” or “employee class” means those employees designated as classified employees; nonclassified employees, including presidents, chief executives and administrators and faculty, as these terms are defined in this article and articles eight, nine and nine-a of this chapter.

5. “Full-time” means a regular employee whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year.

6. “Health and welfare benefit plan” means an arrangement which provides any of the following: Medical, dental, visual, psychiatric or long-term health care, life insurance, accidental death or dismemberment benefits, disability benefits or comparable benefits.

7. “More senior employees” means an employee who has greater longevity with the institution than another
§18B-7-3. Reducing workforce.

(a) Definitions for terms used in this section have the meanings ascribed to them in section two, article one of this chapter and section two, article nine of this chapter, except that, unless clearly noted otherwise, this section applies only to a regular employee who is classified and whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year.

(b) All decisions by an organization or its agents concerning reductions in workforce of full-time classified employees shall be made in accordance with this section and pursuant to a rule adopted by the applicable governing board of an organization, after consultation with and providing thirty days written notice to the applicable staff council of an organization.

(1) For layoffs for reason of lack of funds or work, or abolition of position or material changes in duties or organization, the institution may layoff the incumbent in the position being eliminated. In the case of elimination of some but not all of the positions of the same job title, consideration shall be given to an employee’s documented quality of work performance as demonstrated in performance evaluations of record (including, but not limited to, disciplinary records), skills, seniority as measured by years of service, or other factors, as determined by the board.

(2) If the organization desires to lay off a more senior employee, the organization may offer to the more senior employee a severance package, the value of which shall not exceed the more senior employee’s salary for one year.

§18B-7-6. Continuing education and professional development.
(a) Each higher education organization shall establish and operate an employee continuing education and development program under a joint rule or rules promulgated by the governing board. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for any employees pursuing additional academic study or training to equip themselves better for their duties.

The rules shall encourage continuing education and staff development and shall require that employees be selected on a nonpartisan basis using fair and meaningful criteria which afford all employees opportunities to enhance their skills and productivity in the workforce of the organization. These rules also may include reasonable provisions for the continuation or return of any employee receiving the benefits of the education or training, or for reimbursement by the state for expenditures incurred on behalf of the employee.

(b) Subject to legislative appropriation therefor, the commission and council shall promote and facilitate additional, regular, training and professional development for employees engaged in human resources-related activities at all organizations. The training and professional development:

(1) Shall be developed with emphasis on distance learning, in consideration to limiting travel demands on employees; and

(2) Shall be in addition to and may not supplant the training and professional development regularly provided to any class of employees by each organization prior to the effective date of this section.

§18B-7-8. Reporting.

(a) Personnel reports. —
(1) Beginning December 1, 2020 and every five years thereafter, the commission and council shall report to the Legislative Oversight Commission on Education Accountability addressing the following issues:

(A) Progress made by organizations toward achieving fair compensation of all employees; and

(B) Detailed data disaggregated by organization and employee category or classification, comparing funding for salaries of faculty, classified employees and nonclassified employees as a percentage of the average funding for each of these classes or categories of employees among the organization’s state, region or national markets, as appropriate, and among similar organizations within the state systems of public higher education.

(2) The commission and council shall prepare a human resources report card summarizing the performance of organizations on key human resources measures established by the commission and council. The report card shall be presented to the Legislative Oversight Commission on Education Accountability every five years, beginning December 1, 2020, and shall be made available to the general public. At a minimum, the human resources report card shall contain the following data:

(A) Human resources department metrics by organization:

(i) Areas of human resources functions outsourced to external entities;

(ii) Total expenses per full-time equivalent employee; and

(iii) Tuition revenue per full-time equivalent employee.

(B) Human resources expense data:
(i) Ratio of human resources expenses to operating expenses; and

(ii) Total human resources expense per organization employee.

(C) Compensation data:

(i) Average amount of annual salary increase per full-time equivalent organization employee;

(ii) Total amount of organization employee salaries as a percent of operating expenses; and

(iii) Total amount of organization employee benefit costs as a percent of cash compensation.

(D) System metrics:

(i) Comparisons of faculty salaries at each organization to market averages; and

(ii) Comparisons of classified and nonclassified employee salaries at each organization to current market averages.

(b) Job classification system report. —

By July 1, 2016, and at least once within each five-year period thereafter, the commission and council jointly shall review the effectiveness of the system for classifying jobs and submit an in-depth report to the Legislative Oversight Commission on Education Accountability. The report shall include, but is not limited to, findings, recommendations and supporting documentation regarding the following job classification issues:

(1) The effectiveness of the point factor methodology and a determination of whether it should be maintained; and
(2) The status of the job evaluation plan, including the factors used to classify jobs or their relative values, and a determination of whether the plan should be adjusted.

c) It is the responsibility of the head of human resources for each organization to prepare and submit to the president or chief executive officer all human resources data requested by the commission and council. The president or executive officer of each organization shall submit the requested data at times established by the commission and council.

d) In meeting reporting requirements established by this article and articles eight, nine and nine-a of this chapter:

(1) The commission and council shall use the most recent data available and, as appropriate, shall benchmark it against best practices and appropriate labor markets; and

(2) With the exception of the human resources report card and any other report designated as due no later than a date certain, the commission and council may combine two or more personnel reports if the dates on which they are due 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.

Consistent with this article, and after consulting with and providing 30 days written notice to the faculty senate, a governing board may adopt a rule relating to the faculty. The provisions of any rule adopted by a governing board preempt any conflicting rule adopted by the commission or the council.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

As used in this article and articles seven, eight and nine of this chapter, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Classification system” means the process by which jobs, job titles, career ladders and assignment to pay grades are determined.

(2) “Classified employee” or “employee” means a regular full-time or regular part-time employee of an organization who: (i) does not meet the duties test for exempt status under the provisions of the Fair Labor Standards Act; and (ii) is not otherwise a nonclassified employee designated pursuant to subdivision (11) of this section: Provided, That any employee of an organization who was a classified employee as of January 1, 2017, retains that status unless otherwise deemed a nonclassified employee pursuant to the provisions of subparts (A) through (D) of subdivision (11) of this section.

(3) “Job” means the total collection of tasks, duties and responsibilities assigned to one or more individuals whose work is of the same nature and level.

(4) “Job description” or “position description” means a summary of the most important features of a job, including the general nature and level of the work performed.

(5) “Job evaluation” means a systematic way of determining the value/worth of a job in relation to other jobs in an organization by analyzing weighted compensable factors resulting in the assignment of a job title and pay grade to a position described by a position information questionnaire.

(6) “Job family” means a group of jobs having the same nature of work, but requiring different levels of skill, effort, responsibility or working conditions.
(7) “Job specification” means the generic description of a group of jobs assigned a common job title in the classification system. The job specification contains a brief summary of the purpose of the job; the most common duties and responsibilities performed by positions holding the title; knowledge, skills and abilities necessary to perform the work; and minimum qualifications required for positions assigned the title.

(8) “Job title” means the descriptive name for the total collection of tasks, duties and responsibilities assigned to one or more individuals whose positions have the same nature of work performed at the same level.

(9) “Job worth hierarchy” means the perceived internal value of jobs in relation to each other within an organization.

(10) “Midpoint differential” means the difference in wage rates paid in the midpoints of two adjacent pay grades. A midpoint differential is calculated by taking the difference between the two adjacent midpoints as a percentage of the lower of the midpoints.

(11) “Nonclassified employee” means, an employee of an organization who meets one or more of the following criteria:

(A) Holds a direct policy-making position at the department or organization level;

(B) Reports directly to the president or chief executive officer of the organization;

(C) Is in a position considered by the president or designee to be critical to the institution pursuant to policies or decisions adopted by the governing board;

(D) Is in an information technology-related position;
(E) Is hired after July 1, 2017, and meets the duties test for exempt status under the provisions of the Fair Labor Standards Act at the time of hire or anytime thereafter; or

(F) Was in a nonclassified position as of January 1, 2017.

Unless otherwise established by action of the institution where employed, a nonclassified employee serves at the will and pleasure of the organization, which authority may be delegated by act of the board.

(12) “Organization” means the commission, the council, an agency or entity under the respective jurisdiction of the commission or the council or a state institution of higher education as defined in section two, article one of this chapter.

(13) “Pay grade” means the level to which a job is assigned within a job worth hierarchy as a result of job evaluation.

(14) “Point factor methodology” means a quantitative job evaluation process in which elements of a job are given a factor value and each factor is weighted according to its importance.

(15) “Position information questionnaire” or “PIQ” means a tool used to gather specific job information for a specific position held by an individual, and used for the purposes of evaluating the position for determination of job title and pay grade. The PIQ is used to gather information used to assess the compensable factors of knowledge, experience, complexity and problem solving, freedom of action, scope and effect, breadth of responsibility, intra-systems contacts, external contacts, direct supervision of personnel, indirect supervision of personnel and health, safety and physical considerations.
“Pay range spread” means the difference in the minimum and maximum rate of pay for a pay grade expressed as a percentage.

§18B-9A-5. Compensation planning and review committee established; membership; meetings; powers and duties.

(a) Pursuant to the rule authorized in section seven of this article, the commission and council jointly shall establish and maintain a compensation planning and review committee.

(b) Within the guidelines established in this article and articles seven, eight and nine of this chapter, the committee shall manage all aspects of compensation planning and review that the commission and council jointly delegate to it.

The rule shall contain the following requirements related to the compensation planning and review committee:

(1) A systematic method for appointing committee members who are representative of all the higher education organizations and affected constituent groups, including specifically providing for membership selections to be made from nominations from these higher education organizations and affected constituent groups; and

(2) A requirement that an organization may have no more than two members serving on the committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership; and

(3) A requirement that committee members serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.
(c) The committee shall meet at least quarterly and at other times at the call of the chair. A majority of the voting members serving on the committee at a given time constitutes a quorum for the purpose of conducting business.

(d) An institution may not have a majority of the committee members, and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.

(e) The Compensation Planning and Review Committee has powers and duties related to classified employee compensation programs which include, but are not limited to, the following:

1. Making annual recommendations for revisions in the system classified compensation plan, based on existing economic, budgetary and fiscal conditions or on market study data.

2. Overseeing the annual internal market review;

3. Meeting at least annually with the Job Classification Committee to discuss benchmark jobs to be included in salary surveys, market “hot jobs” that may require a temporary salary adjustment, results of job family reviews and assessment of current job titles within the classification system for market matches and other issues as the Chancellor or chancellor’s designee, in consultation with the chancellors, determines to be appropriate; and

4. Performing other duties as assigned by the commission and council or as necessary or expedient to maintain an effective classification and compensation system.

(f) The commission and council may allow the committee to collapse the three lowest pay grades into a single pay grade and provide for employees to be paid at

(a) The commission and council shall develop and maintain a classified salary schedule and ensure that all organizations under their respective jurisdictions adhere to state and federal laws and duly promulgated and adopted organization rules.

(b) The classified salary schedule serves as the basis for the following activities:

1. Evaluating compensation of classified employees in relation to appropriate external markets; and
2. Developing the minimum salary per pay grade to be adopted by the commission and council.

(c) The classified salary schedule shall meet the following criteria:

1. Sets forth the number of pay grades to be included in the structure;
2. Includes a midpoint value for each pay grade which represents the average market rate of pay for jobs in that pay grade. The commission and council may choose a midpoint value that is not based exclusively on market salary data; and
3. Includes minimum and maximum pay range values based on an established range spread.

(d) The commission and council jointly shall use workforce compensation data provided by Workforce West Virginia and other compensation data as is readily available from national recognized sources, including compensation data of CUPA-HR, to establish the appropriate external market conditions of classified positions. The commission and
council, in consultation with the Compensation Planning and Review Committee, may take any combination of the following actions:

1. Adjust the number of pay grades and the point values necessary to validate the result of the classification system and the job worth hierarchy with the market;

2. Adjust the midpoint differentials between pay grades better to reflect market conditions; or

3. Adjust the range spread for any pay grade.

(e) The commission and council jointly may perform an annual review of market salary data to determine how salaries have changed in the external market. Based on data collected, the commission and council jointly, in consultation with the Compensation Planning and Review Committee, shall adjust the classified salary schedule if changes are supported by the data.

(f) Annually, the commission and council may approve a minimum salary amount that sets forth a compensation level for each pay grade below which no organization employee may be paid, subject to available funds.

1. The minimum salary amount for each pay grade on the classified salary schedule is determined by applying a percentage determined after analysis of the market and existing compensation levels to the annual market salary data. The commission and council may take into consideration other factors they consider appropriate.

2. The salary of an employee working fewer than thirty-seven and one-half hours per week shall be prorated.

(g) The organization rule promulgated pursuant to subsection (c), section seven of this article may provide for differential pay for certain employees who work different shifts, weekends or holidays.

(a) Notwithstanding any provision of law or rule to the contrary, the commission and council jointly shall design, develop, implement and administer the classified personnel system of classification and compensation pursuant to this article and articles seven, eight and nine of this chapter.

(b) System rule. —

The commission and council shall propose a joint rule or rules for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and articles seven, eight and nine of this chapter. The rule shall establish a classified employee classification and compensation system that incorporates best human resources practices.

(1) Organization accountability. —

The commission and council shall propose a joint system rule that provides a procedure for correcting deficiencies identified in the human resources reviews conducted pursuant to section nine, article seven of this chapter. The procedure shall include, but is not limited to, the following components:

(A) Specifying a reasonable time for organizations to correct deficiencies uncovered by a review;

(B) Applying sanctions when major deficiencies are not corrected within the allotted time:

(i) For purposes of this subsection, a major deficiency means an organization has failed to comply with applicable personnel rules of the commission and council.

(ii) When a major deficiency is identified, the commission or council, as appropriate, shall notify the governing board of the institution in writing, giving
particulars of the deficiency and outlining steps the governing board is required to take to correct the deficiency.

(iii) The governing board shall correct the major deficiency within four months or longer provided the length of time is agreed upon by the governing board and the commission or council as applicable, and shall notify the commission or council, as appropriate, when the deficiency has been corrected.

(iv) If the governing boards fail to correct the major deficiency or fail to notify the commission or council, as appropriate, that the deficiency has been corrected within the agreed upon period, the commission or council may apply sanctions.

Sanctions may include, but are not limited to, prohibiting compensation increases for key administrators who have authority over the areas of major deficiency until the identified deficiencies are corrected.

(2) Classified employee classification and compensation. — The classified employee classification and compensation system rule shall establish a classification and compensation system to accomplish the following objectives:

(A) Allowing for performance and other objective, measurable factors such as technical expertise, education, years of experience in higher education and experience above position requirements to be considered in compensation decisions;

(B) Achieving and maintaining appropriate levels of employee dispersion through a pay range;

(C) The rule shall provide that the salary of a current employee may not be reduced by a job reclassification, a modification of the market salary schedule or other conditions that the commission and the council consider appropriate and reasonable;
(D) Establishing a job worth hierarchy and identifying the factors to be used to classify jobs and their relative values and determining the number of points that are necessary to assign a job to a particular pay grade;

(E) Establishing an objective standard to be used in determining when a job description or a position description is up-to-date;

(F) Providing a procedure whereby a classified employee or a supervisor who believes that changes in the job duties and responsibilities of the employee justify a position review may request that a review be done at any time;

(G) Specifying that the acceptable period that may elapse between the time when an employee files a formal request for a position review and the time when the review is completed may not exceed forty-five days. An organization that fails to complete a review within the specified time shall provide the employee back pay from the date the request for review was received if the review, when completed, produces a reclassification of the position into a job in a higher pay grade;

(H) Providing a procedure by which employees may file appeals of job classification decisions for review by the Job Classification Committee prior to filing a formal grievance. The committee shall render a decision within sixty days of the date the appeal is filed with the commission or the council;

(I) Providing for recommendations from the Compensation Planning and Review Committee and the Job Classification Committee to be considered by the commission and the council and to be included in the legislative reporting process pursuant to section eight, article seven of this chapter; and

(J) Establishing and maintaining the job classification committee mandated in section four of this article.
(3) Performance evaluations. — The system rule shall provide for developing and implementing a consistent, objective performance evaluation model and shall mandate that training in conducting performance evaluations be provided for all organization personnel who hold supervisory positions.

(c) Organization rules. —

(1) Each organization shall promulgate and adopt a rule or rules in accordance with the provisions of section six, article one of this chapter to implement requirements contained in the classification and compensation system rule or rules of the commission and council. The commission and council shall provide a model personnel rule for the organizations under their jurisdiction and shall provide technical assistance in rulemaking as requested.

(2) The initial organization rule shall be adopted not later than six months following the date on which the commission and council receive approval to implement the emergency rule promulgated pursuant to this section. Additionally, each organization shall amend its rule to comply with mandated changes not later than six months after the effective date of any change in statute or rules, unless a different compliance date is specified within the statute or rule containing the requirements or mandate.

(3) An organization may not adopt a rule under this section until it has consulted with the appropriate employee class affected by the rule’s provisions.

(4) If an organization fails to adopt a rule or rules as mandated by this subsection, the commission and council may prohibit it from exercising any flexibility or implementing any discretionary provision relating to human resources contained in statute or in a commission or council rule until the organization’s rule requirements have been met.

(5) Additional flexibility or areas of operational discretion identified in the system rule or rules may be
exercised only by an organization which meets the following requirements:

(A) Receives certification from the commission or council, as appropriate, that the organization has achieved full funding of the temporary salary schedule or is making appropriate progress toward achieving full funding pursuant to section three, article nine of this chapter;

(B) Promulgates a comprehensive classification and compensation rule as required by this section;

(C) Receives approval for the classification and compensation rule from the appropriate chancellor in accordance with this section; and

(D) Adopts the rule by vote of the organization’s governing board.

ARTICLE 9B. ORGANIZATION PERSONNEL RULES.

§18B-9B-1. Flexibility to adopt personnel rules; emergency rule authorized.

(a) West Virginia University; Marshall University; West Virginia School of Osteopathic Medicine; or any other organization that provides notice to the commission or council, as appropriate; may, after consultation with staff council of the applicable organization, file a rule or rules to implement articles seven and eight of this chapter, and upon the adoption any rules promulgated by the commission or council under articles seven and eight of this chapter are inapplicable to the organization.

(b) West Virginia University; Marshall University; West Virginia School of Osteopathic Medicine; or any other organization that provides notice to the commission or council, as appropriate, may establish a classification and compensation rule, after consultation with and providing 30 days written notice to the staff council of the applicable organization, that incorporates best human resources practices and addresses the areas of organization
accountability, employee classification and compensation, performance evaluation, reductions in force, and development of organization policies, and upon the adoption the provisions of article nine-a of this chapter and any rule promulgated by the commission or the council thereto, is inapplicable to the extent it conflicts with the rule promulgated by the organization: Provided, That any rule adopted by an organization shall use the definitions of classified and nonclassified employees established in section two of article nine-a of this chapter.

(c) Any rule adopted by an organization pursuant to subsection (b) of this section shall address the following:

(1) Employee classification and compensation. — The rule proposed pursuant to this policy shall establish a classification and compensation system to accomplish the following objectives, including best practices consistent with those objectives:

(A) Providing opportunities for employee advancement based on performance and other objective, measurable factors including education, years of experience, technical expertise, and experience above position requirements;

(B) Identifying the factors to be used to classify jobs and their relative values or comparable best practice and determining the requirements that are necessary to assign a job to a particular salary level; and

(C) Establishing an objective standard to be used in determining when a job description or a position description is up-to-date.

(2) Performance evaluations. — The rule shall provide for developing and implementing a consistent, objective performance evaluation model and shall mandate that training in conducting performance evaluations be provided for all organization personnel who hold supervisory positions.
(3) Management shall meet at least quarterly with representatives of staff council to discuss the implementation and effectiveness of any rule adopted by an organization pursuant to articles seven, eight, nine-a and nine-b of this chapter and may make recommendations to the president or board of Governors of an organization to address any concerns or issues identified by staff council;

(4) The rule may provide for differential pay for certain employees who work different shifts, weekends or holidays and for differential treatment for employees; and

(5) The rule shall provide for an external review of human resource practices at the organization at least once every five years, relating to compliance with the applicable provisions of article seven, eight, nine-a and nine-b of this chapter, including provisions that the staff council have an opportunity to speak with the external Auditors before the 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.


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

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

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

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

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.
(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program) is authorized.

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

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

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

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

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

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

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

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.

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

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

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

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

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

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management) is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program) is authorized.
The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program) is authorized.

The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program) is authorized.

The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Nursing Scholarship Program) is authorized.

The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.

The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program) is authorized.

The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

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

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators) is authorized.
(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (Authorization of degree-granting institutions) is authorized.

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

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

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

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

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

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

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

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

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

(m) The legislative rule filed in the State Register on August 21, 2012, relating to the West Virginia Council for Community and Technical College Education (West Virginia EDGE Program) is authorized.

(n) The legislative rule filed in the State Register on January 28, 2014, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management) is authorized.

(o) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(p) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (Business, Occupational and Trade Schools) is authorized.
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.

(a) Legislative findings. — The Legislature finds that there is a critical need for additional practicing health care professionals in West Virginia. Therefore, there is created a Health Sciences Service Program to be administered by the Vice Chancellor for Health Sciences. The purpose of this program is to provide an incentive for health professional students to complete their training and provide primary care and emergency medical care in underserved areas of West Virginia.

(b) Special account. — There is continued a special revolving fund account under the Higher Education Policy
Commission in the State Treasury formerly known as the Health Sciences Scholarship Fund and hereafter designated the Health Sciences Service Program Fund. The fund shall be used to accomplish the purposes of this section. The fund consists of any of the following:

1. All unexpended health sciences scholarship funds on deposit in the State Treasury on the effective date of this section;

2. Appropriations as may be provided by the Legislature;

3. Repayments, including interest as set by the Vice Chancellor for Health Sciences, collected from program award recipients who fail to practice or teach in West Virginia under the terms of an award agreement or the health sciences scholarship program previously established by this section; and

4. Amounts that may become available from other sources.

Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section shall be paid from the Health Sciences Service Program Fund under the direction of the Vice Chancellor for Health Sciences.

(c) Eligibility requirements. — Award preference is given to West Virginia residents. An individual is eligible for consideration for a Health Sciences Service Program award if the individual:

1. Either:

(A) Is a fourth-year medical student at the Marshall University School of Medicine, West Virginia School of Osteopathic Medicine or West Virginia University School of Medicine who has been accepted in a primary care or
emergency medicine internship/residency program in West Virginia; or

(B) Is enrolled in an approved education program at a West Virginia institution leading to a degree or certification in the field of nurse practitioner, nurse educator, nurse midwife, physician assistant, dentist, pharmacist, physical therapist, doctoral clinical psychologist, licensed independent clinical social worker or other disciplines identified as shortage fields by the Vice Chancellor for Health Sciences; and

(2) Signs an agreement to practice for at least two years in an underserved area of West Virginia or, if pursuing a Master’s Degree in nursing, signs an agreement to teach at least two years for a school of nursing located in West Virginia, as may be determined by the Vice Chancellor for Health Sciences, after receiving the master’s degree.

(d) Program awards. — Program awards shall be in an amount set by the Higher Education Policy Commission of at least $20,000 for medical and dental students and at least $10,000 for all others and may be awarded by the Vice Chancellor for Health Sciences, with the advice of an advisory panel, from the pool of all applicants with a commitment to practice in an underserved area of West Virginia. This section does not grant or guarantee any applicant any right to a program award.

(e) Repayment provisions. — A program award recipient who fails to practice in an underserved area of West Virginia within six months of the completion of his or her training, or who fails to complete his or her training or required teaching, is in breach of contract and is liable for repayment of the program award and any accrued interest. The granting or renewal of a license to practice in West Virginia or to reciprocal licensure in another state based upon licensure in West Virginia is contingent upon beginning payment and continuing payment until complete repayment of the award and any accrued interest. A license,
renewal or reciprocity may not be granted to any person whose repayment is in arrears. The appropriate regulatory board shall inform all other states where a recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in West Virginia as a result of failure to repay the award. This provision shall be explained in bold type in the award contract. Repayment terms, not inconsistent with this section, shall be established by the Vice Chancellor for Health Sciences pursuant to the rule required by this section.

(f) Rule. — The Higher Education Policy Commission shall promulgate a rule pursuant to article three-a, chapter twenty-nine-a of this code to implement and administer this section.

(g) Definitions. — As used in this section:

(1) “Training” means:

(A) The entire degree program or certification program for nurse midwives, nurse practitioners, nurse educators, physician assistants, dentists, pharmacists, physical therapists, doctoral clinical psychologists, licensed independent clinical social workers and other disciplines identified as shortage fields by the Vice Chancellor for Health Sciences; or

(B) Completion of a degree program and an approved residency/internship program for students pursuing a degree in medicine or osteopathy, or as otherwise may be designated for such students in the rule required by this section.

(2) “Underserved area” means any primary care health professional shortage area located in the state as determined by the Bureau for Public Health or any additional health professional shortage area, including an emergency medicine professional determined by the Vice Chancellor 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.

Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of article three, chapter five-a of this code:

Provided, That any contract entered into under the provisions of subsection five, section six of this article, for the provision of Medicaid services by a risk-bearing entity,
is not exempt from the provisions of article three, chapter 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.

(a) The Secretary of the Department of Health and Human Resources shall contact West Virginia’s surrounding states to discuss the creation of a compact. This compact would enable each states’ health care providers to be eligible to be paid for services provided to the other states’ Medicaid participants.

(b) The Secretary shall provide a report on the creation of a Medicaid compact to the Legislative Oversight Commission.
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.


(a) A ground emergency medical transportation services provider, owned or operated by the state or a city, a county, or city and county, that provides services to Medicaid beneficiaries is eligible for supplemental reimbursement.

(b) An eligible provider’s supplemental reimbursement shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible provider shall be equal to the amount of federal financial participation received as a result of the claims submitted.
(2) In no instance may the amount certified, when combined with the amount received from all other sources of reimbursement from the Medicaid program, exceed one hundred percent of actual costs, as determined pursuant to the Medicaid State Plan, for ground emergency medical transportation services.

(3) The supplemental Medicaid reimbursement shall be distributed exclusively to eligible providers under a payment methodology based on ground emergency medical transportation services provided to Medicaid beneficiaries by eligible providers on a per-transport basis or other federally permissible basis. The Department of Health and Human Resources shall obtain approval from the Centers for Medicare and Medicaid Services for the payment methodology to be used, and may not make any payment pursuant to this section prior to obtaining that approval.

(c) No funds may be expended from the state fund, general revenue for any supplemental reimbursement paid under this section.

(d) The nonfederal share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation may be paid only with funds from the governmental entities.

(e) Participation in the program by an eligible provider described in this section is voluntary.

(f) If an applicable governmental entity elects to seek supplemental reimbursement pursuant to this section on behalf of an eligible provider, the governmental entity shall:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the ground emergency medical transportation services are eligible for federal financial participation;
(2) Provide evidence supporting the certification as specified by the Department of Health and Human Resources;

(3) Submit data as specified by the Department of Health and Human Resources to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation; and

(4) Keep, maintain, and have readily retrievable, any records specified by the Department of Health and Human Resources to fully disclose reimbursement amounts to which the eligible provider is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(g) (1) The Department of Health and Human Resources shall promptly seek any necessary federal approvals for the implementation of this section. The Department of Health and Human Resources may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.). If federal approval is not obtained for implementation of this section, this section may not be implemented.

(2) The department shall submit claims for federal financial participation for the expenditures for the services that are allowable expenditures under federal law.

(3) The Department of Health and Human Resources shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(4) Notwithstanding the provisions of subdivision (1) of this subsection, the Department of Health and Human Resources shall, prior to seeking federal approval of any supplemental reimbursement pursuant to this section, attempt to maximize the number of qualified group emergency services...
medical transportation service providers eligible to receive
the supplemental reimbursement. These emergency medical
transportation service providers would include:

(A) Any not-for-profit emergency medical transport
providers not owned by the state or a city, a county, or a city
and county;

(B) Any voluntary emergency transportation service
providers not owned by the state or a city, a county, or a city
and county; and

(C) All other emergency medical transportation service
providers licensed pursuant to the provisions of article four-
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.]
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.

(a) The Division of Justice and Community Services is
created. The purpose of the division is to provide executive
and administrative support to the Governor’s Committee on
Crime Delinquency and Correction in the coordination of
planning for the criminal justice system, to administer
federal and state grant programs assigned to it by the actions
of the Governor or Legislature and to perform such other
duties as the Legislature may from time to time assign to the
division. The division is the designated staffing agency for
the Governor’s Committee on Crime, Delinquency and
Correction, and all of its subcommittees. The division may
apply for grants and other funding from federal or state
programs, foundations, corporations and organizations
which funding is consistent with its responsibilities and the
purposes assigned to it or the subcommittees it staffs. The
Division of Justice and Community Services is hereby
designated as the state administrative agency responsible for
criminal justice and juvenile justice systems, and various
component agencies of state and local government, for the
planning and development of state programs and grants
which may be funded by federal, state or other allocations
in the areas of community corrections, law-enforcement
training and compliance, sexual assault forensic
examinations, victim services, human trafficking and
juvenile justice.

(b) The director of the division shall be named by the
Governor to serve at his will and pleasure.

(c) The director of the division shall take and subscribe
to an oath of office in conformity with article IV, section
five of the Constitution of the State of West Virginia.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

(a) The provisions of this article apply both retroactively
and prospectively.

(b) Any person who has been convicted of an offense or
an attempted offense or has been found not guilty by reason
of mental illness, mental retardation or addiction of an
offense under any of the following provisions of chapter
sixty-one of this code or under a statutory provision of
another state, the United States Code or the Uniform Code
of Military Justice which requires proof of the same
essential elements shall register as set forth in subsection (d)
of this section and according to the internal management
rules promulgated by the superintendent under authority of
section twenty-five, article two of this chapter:

(1) Article eight-a;
(2) Article eight-b, including the provisions of former section six of said article, relating to the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during the year 2000 legislative session;

(3) Article eight-c;

(4) Sections five and six, article eight-d;

(5) Section fourteen, article two;

(6) Sections six, seven, twelve and thirteen, article eight;

(7) Section fourteen-b, article three-c, as it relates to violations of those provisions of chapter sixty-one listed in this subsection; or

(8) Sections two, five and six, article fourteen: Provided, That as to section two of said article only those violations involving human trafficking for purposes of sexual servitude require registration pursuant to this subdivision.

c) Any person who has been convicted of a criminal offense and the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

d) Persons required to register under the provisions of this article shall register in person at the West Virginia State Police detachment responsible for covering the county of his or her residence, and in doing so, provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the address of any habitable real property owned or leased by the registrant that he or she regularly visits: Provided, That a post office box may not be provided in lieu of a physical residential address,
the name and address of the registrant’s employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;

(3) The registrant’s Social Security number;

(4) A full-face photograph of the registrant at the time of registration;

(5) A brief description of the crime or crimes for which the registrant was convicted;

(6) Fingerprints and palm prints;

(7) Information related to any motor vehicle, trailer or motor home owned or regularly operated by a registrant, including vehicle make, model, color and license plate number: Provided, That for the purposes of this article, the term “trailer” shall mean travel trailer, fold-down camping trailer and house trailer as those terms are defined in section one, article one, chapter seventeen-a of this code;

(8) Information relating to any Internet accounts the registrant has and the screen names, user names or aliases the registrant uses on the Internet; and

(9) Information related to any telephone or electronic paging device numbers that the registrant has or uses, including, but not limited to, residential, work and mobile telephone numbers.

(e) (1) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including those persons who are continuing under some post-conviction supervisory status, are released, granted
probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, regional jail administrator, city official or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information required by subsection (d) of this section prior to the release of the person, inform the person of his or her duty to register and send written notice of the release of the person to the State Police within three business days of receiving the information. The notice must include the information required by said subsection. Any person having a duty to register for a qualifying offense shall register upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer or other change in disposition status. Any person currently registered who is incarcerated for any offense shall re-register within three business days of his or her release.

(2) Notwithstanding any provision of this article to the contrary, a court of this State shall, upon presiding over a criminal matter resulting in conviction or a finding of not guilty by reason of mental illness, mental retardation or addiction of a qualifying offense, cause, within seventy-two hours of entry of the commitment or sentencing order, the transmittal to the sex offender registry for inclusion in the registry all information required for registration by a registrant as well as the following nonidentifying information regarding the victim or victims:

(A) His or her sex;

(B) His or her age at the time of the offense; and

(C) The relationship between the victim and the perpetrator.
The provisions of this paragraph do not relieve a person required to register pursuant to this section from complying with any provision of this article.

(f) For any person determined to be a sexually violent predator, the notice required by subsection (d) of this section must also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and

(3) Documentation of any treatment received for the mental abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of this section, the person shall sign in open court a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(h) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article. The information
required to be made public by the State Police by subdivision (2), subsection (b), section five of this article is to be accessible through the Internet. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released through the Internet.

(i) For the purpose of this article, “sexually violent offense” means:

(1) Sexual assault in the first degree as set forth in section three, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(3) Sexual assault of a spouse as set forth in the former provisions of section six, article eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the 2000 legislative session, or of a similar provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction.

(j) For purposes of this article, the term “sexually motivated” means that one of the purposes for which a person committed the crime was for any person’s sexual gratification.

(k) For purposes of this article, the term “sexually violent predator” means a person who has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and
who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term “mental abnormality” means a congenital or acquired condition of a person, that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(m) For purposes of this article, the term “predatory act” means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(n) For the purposes of this article, the term “business days” means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two 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.

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

*NOTE: This section was also amended by S. B. 445 (Chapter 24), which passed subsequent to this act.
“Abandonment” means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

“Abused child” means a child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code;

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code; or

(E) Human trafficking of a child, or attempting to traffic a child, in violation of section two, article fourteen, chapter sixty-one of this code.

“Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

“Battered parent” for the purposes of part six, article four of this chapter, means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter
forty-eight of this code which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

“Child abuse and neglect services” means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

“Condition requiring emergency medical treatment” means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

“Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare
or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian;

(H) The parent, guardian or custodian’s abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child’s health or safety; or

(I) Any other condition that threatens the health, life, or safety of any child in the home.

“Neglected child” means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical
care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child’s parent or custodian;

(C) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

“Petitioner or co-petitioner” means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

“Permanency plan” means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

“Respondent” means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or co-petitioners.

“Sexual abuse” means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact that for a child who is less than sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;
(B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in sections seven, eight or nine of article eight-b, chapter sixty-one of this code.

“Sexual assault” means any of the offenses proscribed in sections three, four or five of article eight-b, chapter sixty-one of this code.

“Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual exploitation” means an act where:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows that the display is likely to be observed by others who would be affronted or alarmed;

(C) A parent, guardian or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity in violation of section five, article fourteen, chapter sixty-one of this code.
“Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 14. HUMAN TRAFFICKING.

§61-14-1. Definitions.

When used in this article, the following words and terms shall have meaning specified unless the context clearly indicates a different meaning:

(1) “Adult” means an individual eighteen years of age or older.

(2) “Coercion” means:

(A) The use or threat of force against, abduction of, serious harm to or physical restraint of an individual;

(B) The use of a plan, pattern or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, physical restraint of or deportation of an individual;

(C) The abuse or threatened abuse of law or legal process;
(D) The destruction or taking of, or the threatened destruction or taking of, an individual’s identification document or other property; or

(E) The use of an individual’s physical or mental impairment when the impairment has a substantial adverse effect on the individual’s cognitive or volitional function.

As used in this article, “coercion” does not include statements or actions made by a duly authorized state or federal law-enforcement officer as part of a lawful law enforcement investigation or undercover action.

(3) “Commercial sexual activity” means sexual activity for which anything of value is given to, promised to or received by a person.

(4) “Debt bondage” means inducing an individual to provide:

(A) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(B) Labor or services in payment toward or satisfaction of a real or purported debt if:

(i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) The length of the labor or services is not limited, and the nature of the labor or services is not defined.

(5) “Forced labor” means labor or services that are performed or provided by another person and are obtained or maintained through the following:

(A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another
person would suffer serious bodily harm, physical restraint or deportation;

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

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

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

Provided, That “forced labor” does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

As applied in this article, forced labor shall not include labor, work or services provided by a minor to the minor’s parent, legal custodian or legal guardian, so long as the legal guardianship or custody of the minor was not obtained for the purpose of compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services; nor shall it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or her parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for the purpose of discipline, supervision or teaching.

(6) “Human trafficking”, “trafficking”, or “traffics” means knowingly recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining or enticing an individual to engage in debt bondage, forced labor or sexual servitude.

(7) “Identification document” means a passport, driver’s license, immigration document, travel document or other government-issued identification document, including a document issued by a foreign government.
(8) “Labor or services” means activity having economic value.

(9) “Minor” means an individual less than eighteen years of age.

(10) “Patronize” means giving, agreeing to give or offering to give anything of value to another person in exchange for commercial sexual activity.

(11) “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency or instrumentality.

(12) “Serious harm” means harm, whether physical or nonphysical, including psychological, economic or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

(13) “Sexual activity” means sexual contact, sexual intercourse or sexual intrusion, as defined in section one, article eight-b of this chapter, or sexually explicit conduct, as defined in section one, article eight-c of this chapter.

(14) “Sexual servitude” means:

(A) Maintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity; or

(B) Using coercion to compel an adult to engage in commercial sexual activity.

(15) “Victim” means an individual who is subjected to human trafficking, regardless of whether a perpetrator is prosecuted or convicted.

§61-14-2. Human trafficking of an individual; penalties.
(a) Any person who knowingly and willfully traffics an adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than $200,000, or both imprisoned and fined.

(b) Any person who knowingly and willfully traffics a minor is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than twenty years, fined not more than $300,000, or both imprisoned and fined.

§61-14-3. Use of forced labor; penalties.

(a) Any person who knowingly uses an adult in forced labor is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than $100,000, or both imprisoned and fined.

(b) Any person who knowingly uses a minor in forced labor is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than $300,000, or both imprisoned and fined.

§61-14-4. Use of persons in debt bondage; penalties.

(a) Any person who knowingly uses an adult in debt bondage is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than $100,000, or both imprisoned and fined.

(b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than $300,000, or both imprisoned and fined.

§61-14-5. Sexual servitude; penalties.
(a) Any person who knowingly uses coercion to compel an adult to engage in commercial sexual activity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than $200,000, or both imprisoned and fined.

(b) Any person who knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than ten nor more than twenty years, fined not more than $300,000, or both imprisoned and fined.

(c) It is not a defense in a prosecution under subsection (b) of this section that the minor consented to engage in commercial sexual activity, or that the defendant believed the minor was an adult.

§61-14-6. Patronizing a victim of sexual servitude; penalties.

(a) Any person who knowingly patronizes another in commercial sexual activity and who knows that such person patronized is a victim of sexual servitude, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than $100,000, or both imprisoned and fined.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who knowingly patronizes a minor to engage in commercial sexual activity and who knows or has reason to know that said minor is a victim of sexual servitude, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than $300,000, or both imprisoned and fined.

§61-14-7. General provisions and other penalties.
(a) Separate violations. — For purposes of this article, each adult or minor victim constitutes a separate offense.

(b) Aggravating circumstance. —

(1) Notwithstanding any provision of this code to the contrary, if an individual is convicted of an offense under this article and the trier of fact makes a finding that the offense involved an aggravating circumstance, the individual shall not be eligible for parole before serving three years in a state correctional facility.

(2) For purposes of this subsection, “aggravating circumstance” means the individual recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway youths, children in foster care, the homeless or victims of human trafficking, domestic violence or sexual assault.

(c) Restitution. —

(1) The court shall order a person convicted of an offense under this article to pay restitution to the victim of the offense.

(2) A judgment order for restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action in accordance with section four, article eleven-a of this chapter, including filing a lien against the person, firm or corporation against whom restitution is ordered.

(3) The court shall order restitution under subdivision (1) of this subsection even if the victim is unavailable to accept payment of restitution.

(4) If the victim does not claim restitution ordered under subdivision (1) of this subsection within five years of the entry of the order, the restitution shall be paid to the Crime Victims Compensation Fund created under section four, article two-a, chapter fourteen of this code.
(d) **Eligibility for Compensation Fund.** — Notwithstanding the definition of victim in section three, article two-a, chapter fourteen of this code, a victim of any offense under this article is a victim for all purposes of article two-a, chapter fourteen of this code: *Provided, That* for purposes of subsection (b), section fourteen, article two-a, chapter fourteen of this code, if otherwise qualified, a victim of any offense under this article may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.

(e) **Law Enforcement Notification.** — Should a law-enforcement officer encounter a child who reasonably appears to be a victim of an offense under this article, the officer shall notify the Department of Health and Human Resources. If available, the Department of Health and Human Resources may notify the Domestic Violence Program serving the area where the child is found.

(f) **Forfeiture; Debarment.** —

1. The following are declared to be contraband and no person shall have a property interest in them:

   A. All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this article; and

   B. Any property constituting or derived from gross profits or other proceeds obtained from a violation of this article.

2. In any action under this section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

3. Forfeiture actions under this section shall use the procedure set forth in article seven, chapter sixty-a of this code.
(4) Any person or business entity convicted of a violation of this article shall be debarred from state or local government contracts.


(a) In a prosecution or a juvenile prosecution for an offense of prostitution in violation of subsection (b), section five, article eight of this chapter, a minor shall not be held criminally liable if the Court determines that the minor is a victim of an offense under this article: Provided, That subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.

(b) This section does not apply in a prosecution or a juvenile proceeding for any of the other offenses under subsection (b), section five, article eight of this chapter, including specifically soliciting, inducing, enticing or procuring another to commit an act or offense of prostitution, unless it is determined by the court that the minor was coerced into the criminal behavior.

(c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in section two-hundred-one, article one, chapter forty-nine of this code, and may be eligible for services under chapter forty-nine of this code including, but not limited to, appropriate child welfare services.


(a) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, an individual convicted of prostitution in violation of subsection (b), section five, article eight of this chapter as a direct result of being a victim of trafficking, may apply by petition to the circuit court in the county of conviction to vacate the conviction and expunge the record of conviction. The court may grant the petition upon a
finding that the individual’s participation in the offense was a direct result of being a victim of trafficking.

(b) A victim of trafficking seeking relief under this section is not required to complete any type of rehabilitation in order to obtain expungement.

(c) A petition filed under subsection (a) of this section, any hearing conducted on the petition, and any relief granted are subject to the procedural requirements of section twenty-six, article eleven of this chapter: Provided, That the age or criminal history limitations in that section are 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.

The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in section seven of this article and such judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (i) Kidnapping or abduction as defined and prohibited by the provisions of sections fourteen and fourteen-a, article two, chapter sixty-one of this code and including threats to kidnap or demand ransom as defined and prohibited by the provisions of section fourteen-c of said article two; (ii) of any offense included and prohibited by section eleven, article four, chapter twenty-five of said code, sections eight, nine and ten, article five, chapter sixty-one of said code or section one, article
chapter sixty-two of said code to the extent that any of said sections provide for offenses punishable as a felony; (iii) dealing, transferring or trafficking in any controlled substance or substances in the felonious violation of chapter sixty-a of this code; (iv) of any offense included and prohibited by article fourteen, chapter sixty-one of this code; or (v) any aider or abettor to any of the foregoing offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or conspirator is a party to the 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.


(b) On or before July 1, 2001, the commissioner shall propose rules for legislative approval in accordance with article twenty, chapter twenty-nine-a of this code necessary to carry out the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999) and this article.

(c) Medical records and medical billing records obtained by insurers in connection with insurance claims or civil litigation 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, and no additional restrictions or conditions may be imposed 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. The Insurance Commissioner shall review the provisions of Title 114, Series 57 of the Code of State Rules and, to the extent determined necessary, shall propose new rules or modify existing rules by December 31, 2017 to address:

(1) The circumstances under which an insurance company may disclose medical records and medical billing records to other persons or entities;
(2) The circumstances under which personal identifying information of a person must be redacted before that person’s medical records or medical billing records may be disclosed to other persons or entities;

(3) The steps an insurance company is required to undertake before medical records or medical billing records are disclosed to other persons or entities to assure that any person or entity to which an insurance company is disclosing a person’s medical records or medical billing records will be using such records only for purposes permitted by law; and

(4) The implementation of the requirement that the insurance company has processes or procedures in place to prevent the unauthorized access by its own employees to a person’s confidential medical records or medical billing 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.

(a) As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and
medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2018, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions include:

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:
(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient’s treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.
ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3aa. Step therapy.

(a) As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan
issuer performing utilization review for its own health benefit plan.

(b) A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2018, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions include:

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack
of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient’s treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7p. Step therapy.

(a) As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.
(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2018, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions include:
(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.
(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient’s treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8m. Step therapy.

(a) As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.
“Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

“Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

“Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2018, shall comply with the provisions of this article.

Step therapy protocol exceptions include:

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.
(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient’s treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the 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-8o. 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
determination as to whether a step therapy protocol should
23 apply in a particular situation, or whether the step therapy
24 protocol should be overridden in favor of immediate
25 coverage of the health care provider’s selected prescription
26 drug. This determination is based on a review of the
27 patient’s or prescriber’s request for an override, along with
28 supporting rationale and documentation.
(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2018, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions include:

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and
such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient’s treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription 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.]
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 aid 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.

The purpose of this article is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to the extent provided in this article, minimize financial loss to claimants or policyholders because of the insolvency of an insurer, and to permit and to provide an association to assess the cost of this protection among insurers.


This article applies to all kinds of direct insurance, but is not applicable to the following:

1. Life, annuity, health or disability insurance;
2. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
3. Fidelity or surety bonds, or any other bonding obligations;
4. Credit insurance, vendors’ single interest insurance or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
5. Insurance of warranties or service contracts including insurance that provides for the repair, replacement or service of goods or property, indemnification for repair,
replacement or service for the operational or structural
failure of the goods or property due to a defect in materials,
workmanship or normal wear and tear, or provides
reimbursement for the liability incurred by the issuer of
agreements or service contracts that provide such benefits;

(6) Title insurance;
(7) Ocean marine insurance;
(8) Any transaction or combination of transactions
between a person, including affiliates of such person, and an
insurer, including affiliates of the insurer, which involves
the transfer of investment or credit risk unaccompanied by
transfer of insurance risk; or

(9) Any insurance provided by or guaranteed by a
government entity or agency.

§33-26-4. Construction.

This article shall be construed to effect the purpose
under section two of this article which constitutes an aid and
guide to interpretation.

§33-26-5. Definitions.

As used in this article:

(1) “Account” means any one of the three accounts
created by section six of this article.

(2) “Affiliate” means a person who directly or
indirectly, through one or more intermediaries, controls, is
controlled by or is under common control with another
person on December 31 of the year immediately preceding
the date the insurer becomes an insolvent insurer.

(3) “Affiliate of the insolvent insurer” means a person who
directly or indirectly, through one or more intermediaries,
controls, is controlled by or is under common control with an
insolvent insurer on December 31 of the year prior to the date the insurer becomes an insolvent insurer.

(4) "Association" means the West Virginia Insurance Guaranty Association created under section six of this article.

(5) "Association similar to the association" means any guaranty association, security fund or other insolvency mechanism that affords protection similar to that of the association. The term shall also include any property and casualty insolvency mechanism that obtains assessments or other contributions from insurers on a preinsolvency basis.

(6) "Claimant" means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(7) "Commissioner" means the Insurance Commissioner of West Virginia.

(8) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(9) (A) "Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this article applies issued by an insurer, if the insurer
becomes an insolvent insurer after the effective date of this article and:

(i) The claimant or insured is a resident of this state at the time of the insured event: Provided, That for entities other than an individual, the residence of a claimant, insured or policyholder is the state in which its principal place of business is located at the time of the insured event; or

(ii) The claim is a first party claim for damage to property with a permanent location in this state.

(B) “Covered claim” does not include:

(i) Any amount awarded as punitive or exemplary damages;

(ii) Any amount sought as a return of premium under any retrospective rating plan;

(iii) Any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation or self-insurer may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the association obligation limitations set forth in section eight of this article;

(iv) Any first party claim by an insured whose net worth exceeds $25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer: Provided, That an insured’s net worth on that date shall be considered to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis: Provided, however, That this exclusion does not apply to any claim for benefits under a workers’
compensation insurance policy required by chapter twenty-three of this code;

(v) Any third party claim relating to a policy of an insured whose net worth exceeds $25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer: Provided, That an insured’s net worth on that date shall be considered to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis: Provided, however, That this exclusion does not apply to:

(I) Third party claims against the insured where the insured has applied for or consented to the appointment of a receiver, trustee or liquidator for all or a substantial part of its assets, filed a voluntary petition in bankruptcy, filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law, or if an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or substantial part of its assets; or

(II) Any claim for benefits under a workers’ compensation insurance policy required by chapter twenty-three of this code;

(vi) Any claim that would otherwise be a covered claim but is an obligation to, or on behalf of a, person who has a net worth greater than that allowed by the insurance guaranty association law of the state of residence of the claimant at the time specified by that law and which association has denied coverage to that claimant on that basis: Provided, That this exclusion does not apply to any claim for benefits under a workers’ compensation insurance policy required by chapter twenty-three of this code;

(vii) Any first party claims by an insured which is an affiliate of the insolvent insurer;
(viii) Any fee or other amount relating to goods or services sought by, or on behalf of, any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent;

(ix) Any fee or other amount sought by, or on behalf of, any attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the association; or

(x) Any claims for interest.

(10) “Insolvent insurer” means an insurer licensed to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation has been entered with a finding of insolvency by a court of competent jurisdiction in the insurer’s state of domicile.

(11) “Member insurer” means any person who: writes any kind of insurance to which this article applies under section three of this article, including farmers’ mutual fire insurance companies and the exchange of reciprocal or interinsurance contracts; and is licensed to transact insurance in this state. An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this article applies, however the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer’s license and assessments levied after the termination or expiration, which relate to any insurer which became an insolvent insurer prior to the termination or expiration of the insurer’s license.

(12) “Net direct written premiums” means direct gross premiums written in this state on insurance policies to which
this article applies, less return premiums on the policies and dividends paid or credited to policyholders on such direct business. “Net direct written premiums” does not include premiums on contracts between insurers or reinsurers.

(13) “Person” means any individual or legal entity, including governmental entities.

(14) “Receiver” means receiver, liquidator, rehabilitator or conservator as the context may require.

(15) “Self-insurer” means a person that covers its liability through a qualified individual or group self-insurance program or any other formal program created for the specific purpose of covering liabilities typically covered by insurance.


(a) The association shall:

(1) Be obligated to pay covered claims existing prior to the final order of liquidation, that arise within thirty days after the final order of liquidation or before the policy expiration date if the expiration date is less than thirty days after the final order of liquidation, or that arise before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the final order of liquidation. This obligation shall be satisfied by paying to the claimant an amount as follows:

(A) The full amount of a covered claim for benefits under a workers’ compensation insurance policy: Provided, That any covered claim for deliberate intention, including any action pursuant to section two, article four, chapter twenty-three of this code, may not exceed $300,000 per claim.

(B) An amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium.
(C) An amount not exceeding $300,000 per claim for all other covered claims: Provided, That for purposes of this limitation, all claims of any kind whatsoever arising out of, or related to, bodily injury or death to any one person constitutes a single claim, regardless of the number of claims made, or the number of claimants.

In no event may the association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this article, a covered claim may not include a claim filed with the association after the earlier of: (i) Twenty-five months after the date of the final order of liquidation; or (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

Any obligation of the association to defend an insured on a covered claim shall cease upon the association’s: (i) Payment, either by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the association’s covered claim obligation limit or the applicable policy limit; or (ii) tender of such amount.

(2) Be considered the insurer only to the extent of its obligation on the covered claims and to that extent, subject to the limitations provided in this article, have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations. The association may not be considered the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal jurisdiction of the courts of any state.

(3) Allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subdivision (1) of this
subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of preparing any reports specified in section thirteen of this article and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year prior to the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year prior to the assessment on the kinds of insurance in the account: *Provided,* That farmers mutual insurance companies that do not issue workers’ compensation insurance policies may not be assessed to pay for the obligations of the association payable from the workers’ compensation insurance account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any one year on any account an amount greater than two percent of that member insurer’s net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon after that as funds become available. The association shall pay claims in any order that it deems reasonable, including the payment of claims as they are received from the claimant or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer’s financial statement to reflect the amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance: *Provided, however,* That during the period of deferment, no dividends may be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment does
not reduce capital or surplus below required minimums. The payments shall be refunded to those companies receiving larger assessments by virtue of the deferment, or at the election of any such company, credited against future assessments.

(4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association’s obligation and deny all other claims. The association may appoint and direct legal counsel retained under liability insurance policies for the defense of covered claims.

(5) Notify claimants in this state as determined necessary by the commissioner and upon the commissioner’s request, to the extent records are available to the association.

(6) (A) Have the right to review and contest as set forth in this subsection settlements, releases, compromises, waivers and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the final order of liquidation. In an action to enforce settlements, releases and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the final order of liquidation, the association may assert the following defenses, in addition to the defenses available to the insurer:

(i) The association is not bound by a settlement, release, compromise or waiver executed by an insured or the insurer, or any judgment entered against an insured or the insurer by consent or through a failure to exhaust all appeals, if the settlement, release, compromise, waiver or judgment was:

(I) Executed or entered within one hundred twenty days prior to the entry of a final order of liquidation and the insured or the insurer did not use reasonable care in entering into the settlement, release, compromise, waiver or judgment, or did not pursue all reasonable appeals of an adverse judgment; or
(II) Executed by or taken against an insured or the insurer based on default, fraud, collusion or the insurer’s failure to defend.

(ii) If a court of competent jurisdiction finds that the association is not bound by a settlement, release, compromise, waiver or judgment for the reasons described in subparagraph (i), paragraph (A), subdivision (6) of this subsection, the settlement, release, compromise, waiver or judgment shall be set aside and the association may defend any covered claim on the merits. The settlement, release, compromise, waiver or judgment may not be considered as evidence of liability or damages in connection with any claim brought against the association or any other party under this article.

(iii) The association may assert any statutory defenses or other defenses or rights of offset against any settlement, release, compromise or waiver executed by an insured or the insurer, or any judgment taken against the insured or the insurer.

(B) As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend, the association, either on its own behalf or on behalf of an insured may apply to have the judgment, order, decision, verdict or finding set aside by the same court or administrator that entered the judgment, order, decision, verdict or finding and may defend the claim on the merits.

(7) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(8) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the
association and shall pay the other expenses of the association authorized by this article.

(9) Establish procedures for requesting financial information from insureds and claimants on a confidential basis for purposes of applying sections of this article concerning the net worth of first and third-party claimants, subject to that information being shared with any other association similar to the association and the liquidator for the insolvent company on the same confidential basis. If the insured or claimant refuses to provide the requested financial information and an auditor’s certification of the same where requested and available, the association may consider the net worth of the insured or claimant to be in excess of $25 million at the relevant time.

(b) The association may:

(1) Employ or retain persons that are necessary to handle claims and perform other duties of the association.

(2) Borrow funds necessary to effect the purposes of this article in accord with the plan of operation.

(3) Sue or be sued, and the power to sue includes the power and right to intervene as a party as a matter of right before any court in this state that has jurisdiction over an insolvent insurer as defined by this article.

(4) Negotiate and become a party to contracts that are necessary to carry out the purpose of this article.

(5) Perform other acts that are necessary or proper to effectuate the purpose of this article.

(6) Refund to the member insurers in proportion to the contribution of each member insurer to an account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any
account exceed the liabilities of that account as estimated by
the board of directors for the coming year.


(a) The association shall:

(1) Submit to the commissioner a plan of operation and
any amendments thereto necessary or suitable to assure the
fair, reasonable and equitable administration of the
association. The plan of operation and any amendments
thereto become effective upon approval in writing by the
commissioner.

(2) If the association fails to submit a suitable plan of
operation within ninety days following the effective date of
this article or if at any time thereafter the association fails to
submit suitable amendments to the plan, the commissioner
shall, after notice and hearing, adopt rules for legislative
approval as are necessary or advisable to effectuate the
provisions of this article. The rules shall continue in force
until modified by the commissioner or superseded by a plan
submitted by the association and approved by the
commissioner. All such rules shall be proposed in
accordance with chapter twenty-nine-a of this code.

(b) All member insurers shall comply with the plan of
operation.

(c) The plan of operation shall:

(1) Establish the procedures whereby all the powers and
duties of the association under section eight of this article
will be performed.

(2) Establish procedures for handling assets of the
association.

(3) Establish the amount and method of reimbursing
members of the board of directors under section seven of
this article.
(4) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims.

(5) Establish regular places and times for meetings of the board of directors.

(6) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors.

(7) Provide that any member insurer aggrieved by a final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

(8) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(9) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision (3), subsection (a), and subdivision (2), subsection (b), section eight of this article are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection may take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this article.

§33-26-10. Duties and powers of the commissioner.

(a) The commissioner shall:
(1) Notify the association of the existence of an insolvent insurer not later than three business days after he or she receives notice of the determination of the insolvency.

(2) Upon request of the board of directors, provide the association a statement of the net direct written premiums of each member insurer.

(b) The commissioner may:

(1) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this article. The notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

(2) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine may not exceed five percent of the unpaid assessment per month, except that no fine may be less than $100 per month.

(3) Revoke the designation of any servicing facility if he or she finds that claims are being handled unsatisfactorily.

(c) Any final order of the commissioner under this article is subject to judicial review as provided by section fourteen, article two of this chapter.

§33-26-11. Effect of paid claims.

(a) Any person recovering under this article is considered to have assigned the person’s rights under the
policy to the association to the extent of the person’s recovery from the association. Every insured or claimant seeking the protection of this article shall cooperate with the association to the same extent as that person would have been required to cooperate with the insolvent insurer. The association has no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if the sums had been paid by the insolvent insurer and except as provided in subsection (b) of this section. In the case of an insolvent insurer operating on a plan whereby insurance policies with assessment liability have been issued to insureds, payments of claims by the association may not operate to reduce the liability of the insureds to the receiver, liquidator or statutory successor for unpaid assessments.

(b) The association may recover from the following persons all amounts paid by the association on behalf of the person, whether for indemnity or defense or otherwise:

(1) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds $25 million: Provided, That an insured’s net worth on such date shall be considered to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis: Provided, however, That this provision may not apply to any claim for benefits under a workers’ compensation insurance policy required by chapter twenty-three of this code; and

(2) Any person who is an affiliate of the insolvent insurer.

(c) The association and any association similar to the association in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claims obligations as determined under this article or similar laws in other states and shall receive dividends and any other distributions at the priority
set forth in section nineteen-a, article ten of this chapter. The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this article and by settlements of claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled, in the absence of this article, against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the receiver’s expenses.

(d) The association shall periodically file with the receiver or the liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims against the association which shall preserve the rights of the association against the assets of the insolvent insurer.

§33-26-12. Exhaustion of other coverage; deductible reimbursement.

(a) Any person having a claim under an insurance policy, whether or not it is a policy issued by a member insurer, and the claim under such other policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association, shall first exhaust all coverage provided by any such policy. Any amount payable on a covered claim under this article shall be reduced by the full applicable limits stated in such other insurance policy and the association shall receive a full credit for such stated limits or, where there are no applicable stated limits, the claim shall be reduced by the total recovery. Notwithstanding the foregoing, no person may be required to exhaust any right under the policy of an insolvent insurer.

(1) A claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the insolvent insurer that gives rise to the covered claim is
considered to be a claim arising from the same facts, injury or 
loss that gave rise to the covered claim against the association.

(2) A claim under an insurance policy shall also include, 
for purposes of this section:

(A) A claim against a health maintenance organization, 
a hospital plan corporation or a professional health service 
corporation; and

(B) Any amount payable by or on behalf of a self-
insurer.

(3) To the extent that the association’s obligation is 
reduced by the application of this section, the liability of the 
person insured by the insolvent insurer’s policy for the 
claim shall be reduced in the same amount.

(b) Any person having a claim which may be recovered 
under more than one Insurance Guaranty Association or its 
equivalent shall seek recovery first from the association of 
the place of residence of the insured except that if it is a first 
party claim for damage to property with a permanent 
location, he or she shall seek recovery first from the 
association of the location of the property, and if it is a 
workers’ compensation claim, the person shall seek 
recovery first from the association of the residence of the 
claimant. Any recovery under this article shall be reduced 
by the amount of the recovery from any other insurance 
guaranty association or its equivalent.

(c) To the extent the association pays any deductible claim 
for which the insurer would have been entitled to 
reimbursement from the insured, the association is entitled to 
the full amount of the reimbursement and available collateral 
as provided under this subsection to the extent necessary to 
reimburse the association. Reimbursements paid to the 
association pursuant to this subsection may not be treated as 
distributions or as early access payments. To the extent that the 
association pays a deductible claim that is not reimbursed
either from collateral or by insured payments, or incurred expenses in connection with large deductible policies that are not reimbursed under this subsection, the association has an exclusive cause of action against the insured, including the right to enforce against the insured the rights of the insurer with respect to any obligation of the insured to reimburse the insurer for deductibles or pay claims within a deductible. Further, the fund is vested with a first lien in any collateral provided by the insured to the insolvent insurer to secure the insured’s performance, to the extent of claims paid by the association, which lien can be perfected by notice to the liquidator. Nothing in this subsection limits any rights of the association that may otherwise exist under applicable law to obtain reimbursement from insureds for claims payments made by the association under policies of the insurer or for the association’s related expenses.


To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors may, upon majority vote, make recommendations to the commissioner on matters generally related to improving or enhancing regulation for solvency.

(2) At the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, the board of directors may, upon majority vote, prepare a report on the history and causes of the insolvency, based on the information available to the association and submit the report to the commissioner.

(3) Reports and recommendations provided under this section may not be considered public documents subject to disclosure under chapter twenty-nine-b of this code.

§33-26-14. Examination of association; financial report.
The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than April 30 of each year, a financial report for the preceding calendar year, in a form approved by the commissioner.


(a) All proceedings in which the insolvent insurer is a party or obligated to defend a party in any court in this state shall, subject to waiver by the association in specific cases involving covered claims, be stayed for six months and such additional time as may be determined by the court from the date the insolvency is determined to permit proper defense by the association of all pending causes of action.

(b) The liquidator, receiver or statutory successor of an insolvent insurer covered by this article shall permit access by the association, or its authorized representative to such of the insolvent insurer’s records that are necessary for the association in carrying out its functions under this article with regard to covered claims. In addition, the liquidator, receiver or statutory successor shall provide the association or its representative with copies of such records upon the request by the association and at the expense of the association.

(c) As to any covered claims arising from a judgment under any order, decision, verdict or finding based on the default of the insolvent insurer or its wrongful failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.
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.
(a) The purpose of this article is to provide requirements for maintaining a risk management framework and completing an own risk and solvency assessment (ORSA) and provide guidance and instructions for filing an ORSA summary report with the Insurance Commissioner of this state.

(b) The requirements of this article apply to all insurers domiciled in this state unless exempt pursuant to section six of this article.

(c) The Legislature finds and declares that the ORSA summary report shall contain confidential and sensitive information related to an insurer or insurance group’s identification of risks material and relevant to the insurer or insurance group filing the report. This information shall include proprietary and trade-secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of this Legislature that the ORSA summary report shall be a confidential document filed with the commissioner, that the ORSA summary report may be shared only as stated herein and to assist the commissioner in the performance of his or her duties, and that in no event shall the ORSA summary report be subject to public disclosure.


(a) “Commissioner” means the Insurance Commissioner of the State of West Virginia, his or her deputies or the insurance department, as appropriate.

(b) “Insurance group” means, for the purpose of conducting an ORSA, those insurers and affiliates included within an insurance holding company system as defined in article twenty-seven of this chapter.

(c) “Insurer” has the same meaning as set forth in section two, article one of this chapter, except that it does not include agencies, authorities or instrumentalities of the
United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

(d) “NAIC” means the National Association of Insurance Commissioners.

(e) “Own risk and solvency assessment” or “ORSA” means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group’s current business plan and the sufficiency of capital resources to support those risks.

(f) “ORSA Guidance Manual” means the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the NAIC and as amended from time to time. A change in the ORSA Guidance Manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the NAIC.

(g) “ORSA summary report” means a confidential high-level summary of an insurer or insurance group’s ORSA.


An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

§33-40B-4. ORSA Requirement.

Subject to section six of this article, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA shall be conducted no less than annually but also at any time
when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

§33-40B-5. ORSA Summary Report.

(a) Upon the commissioner’s request, and no more than once each year, an insurer shall submit to the commissioner an ORSA summary report or any combination of reports that together contain the information described in the ORSA Guidance Manual, applicable to the insurer and/or, the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the report(s) required by this subsection if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(b) The report(s) shall include a signature of the insurer or insurance group’s chief risk officer or other executive having responsibility for the oversight of the insurer’s enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer’s board of directors or the appropriate committee thereof.

(c) An insurer may comply with subsection (a) of this section by providing the most recent and substantially similar report(s) provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. Any report in a language other than English must be accompanied by a translation of that report into the English language.
§33-40B-6. Exemption.

(a) An insurer is exempt from the requirements of this article, if:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500 million; and

(2) The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1 billion.

(b) If an insurer qualifies for exemption pursuant to subdivision (1), subsection (a) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subdivision (2), subsection (a) of this section, then the ORSA summary report that may be required pursuant to section five shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA summary report for any combination of insurers provided any combination of reports includes every insurer within the insurance group.

(c) If an insurer does not qualify for exemption pursuant to subdivision (1), subsection (a) of this section, but the insurance group of which it is a member qualifies for exemption pursuant to subdivision (2), subsection (a) of this section, then the only ORSA summary report that may be required pursuant to section five of this article is the report applicable to that insurer.

(d) An insurer that does not qualify for exemption pursuant to subsection (a) of this section may apply to the commissioner for a waiver from the requirements of this article.
article based upon unique circumstances. In deciding whether to grant the insurer’s request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer’s request for a waiver.

(e) Notwithstanding the exemptions stated in this section:

(1) The commissioner may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA summary report based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; and

(2) The commissioner may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA summary report if the insurer has risk-based capital for company action level event as set forth in section three, article forty of this chapter, meets one or more of the standards of an insurer considered to be in hazardous financial condition as defined in section three-a, article thirty-four of this chapter, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer’s most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the
insurer has one year following the year the threshold is exceeded to comply with the requirements of this article.


(a) The ORSA summary report shall be prepared consistent with the ORSA Guidance Manual, subject to the requirements of subsection (b) of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the commissioner.

(b) The review of the ORSA summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.


(a) Documents, materials or other information, including the ORSA summary report, in the possession of or control of the Insurance Commissioner that are obtained by, created by or disclosed to the commissioner or any other person under this article, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to article one, chapter twenty-nine-b of this code, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner’s official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

(b) Neither the commissioner nor any person who received documents, materials or other ORSA-related information, through examination or otherwise, while
acting under the authority of the commissioner or with whom the documents, materials or other information are shared pursuant to this article shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the commissioner’s regulatory duties, the commissioner:

(1) May, upon request, share documents, materials or other ORSA-related information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section, including proprietary and trade-secret documents and materials with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in section six-a, article twenty-seven of this chapter, with the NAIC and with any third-party consultants designated by the commissioner: Provided, That the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(2) May receive documents, materials or other ORSA-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in section six-a, article twenty-seven of this chapter, and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information;
(3) Shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this article, consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this article, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(B) Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this article remains with the commissioner and the NAIC’s or a third-party consultant’s use of the information is subject to the direction of the commissioner;

(C) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(D) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this article is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(E) Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this article; and
(F) If there is an agreement involving a third-party consultant, provide for the insurer’s written consent.

(d) The sharing of information and documents by the commissioner pursuant to this article shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the commissioner under this section or as a result of sharing as authorized in this article.

(f) Documents, materials or other information in the possession or control of the NAIC or a third-party consultant pursuant to this article shall be confidential by law and privileged, shall not be subject to article one, chapter twenty-nine-b of this code, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.


Any insurer failing, without just cause, to timely file the ORSA summary report as required in this article shall, after notice and hearing, pay a penalty of $2,500 for each day’s delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is $75,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

§33-40B-10. Severability.

The provisions of this article are severable and accordingly, if any part of this article is adjudged to be
unconstitutional or invalid, that determination does not affect the continuing validity of the remaining provisions of this article.

§33-40B-11. Effective Date.

The requirements of this article shall become effective on January 1, 2018. The first filing of the ORSA summary 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.

This article may be cited and known as the Pharmacy Audit Integrity Act.


This article covers any audit of the records of a pharmacy conducted by a managed care company, third-party payer, pharmacy benefits manager or an entity that represents a covered entity.


For purposes of this article:

“Auditing entity” means a person or company that performs a pharmacy audit, including a covered entity, pharmacy benefits manager, managed care organization or third-party administrator.

“Business day” means any day of the week excluding Saturday, Sunday and any legal holiday as set forth in section one, article two, chapter two of this code.

“Claim level information” means data submitted by a pharmacy or required by a payer or claims processor to adjudicate a claim.

“Covered entity” means a contract holder or policy holder providing pharmacy benefits to a covered individual under a health insurance policy pursuant to a contract administered by a pharmacy benefits manager.

“Covered individual” means a member, participant, enrollee or beneficiary of a covered entity who is provided health coverage by a covered entity, including a dependent or other person provided health coverage through the policy or contract of a covered individual.
“Extrapolation” means the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims or other errors on any portion of claims submitted, based on the frequency of dollar amount of overpayments, underpayments, nonvalid claims or other errors actually measured in a sample of claims.

“Health care provider” has the same meaning as defined in section two, article forty-one of this chapter.

“Health insurance policy” means a policy, subscriber contract, certificate or plan that provides prescription drug coverage. The term includes both comprehensive and limited benefit health insurance policies.

“Insurance commissioner” or “commissioner” has the same meaning as defined in section five, article one of this chapter.

“Network” means a pharmacy or group of pharmacies that agree to provide prescription services to covered individuals on behalf of a covered entity or group of covered entities in exchange for payment for its services by a pharmacy benefits manager or pharmacy services administration organization. The term includes a pharmacy that generally dispenses outpatient prescriptions to covered individuals or dispenses particular types of prescriptions, provides pharmacy services to particular types of covered individuals or dispenses prescriptions in particular health care settings, including networks of specialty, institutional or long-term care facilities.

“Nonproprietary drug” means a drug containing any quantity of any controlled substance or any drug which is required by any applicable federal or state law to be dispensed only by prescription.

“Pharmacist” means an individual licensed by the West Virginia Board of Pharmacy to engage in the practice of pharmacy.
“Pharmacy” means any place within this state where drugs are dispensed and pharmacist care is provided.

“Pharmacy audit” means an audit, conducted on-site by or on behalf of an auditing entity of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a covered individual.

“Pharmacy benefits management” means the performance of any of the following:

1. The procurement of prescription drugs at a negotiated contracted rate for dispensation within the State of West Virginia to covered individuals;

2. The administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals;

3. The administration of pharmacy benefits, including:
   (A) Operating a mail-service pharmacy;
   (B) Claims processing;
   (C) Managing a retail pharmacy network;
   (D) Paying claims to a pharmacy for prescription drugs dispensed to covered individuals via retail or mail-order pharmacy;
   (E) Developing and managing a clinical formulary including utilization management and quality assurance programs;
   (F) Rebate contracting administration; and
   (G) Managing a patient compliance, therapeutic intervention and generic substitution program.
“Pharmacy benefits manager” means a person, business or other entity that performs pharmacy benefits management for covered entities;

“Pharmacy record” means any record stored electronically or as a hard copy by a pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy services or other component of pharmacist care that is included in the practice of pharmacy.

“Pharmacy services administration organization” means any entity that contracts with a pharmacy to assist with third-party payer interactions and that may provide a variety of other administrative services, including contracting with pharmacy benefits managers on behalf of pharmacies and managing pharmacies’ claims payments from third-party payers.


(a) An entity conducting a pharmacy audit under this article shall conform to the following rules:

(1) Except as otherwise provided by federal or state law, an auditing entity conducting a pharmacy audit may have access to a pharmacy’s previous audit report only if the report was prepared by that auditing entity.

(2) Information collected during a pharmacy audit shall be confidential by law, except that the auditing entity conducting the pharmacy audit may share the information with the pharmacy benefits manager and with the covered entity for which a pharmacy audit is being conducted and with any regulatory agencies and law-enforcement agencies as required by law.

(3) The auditing entity conducting a pharmacy audit may not compensate an employee or contractor with which an auditing entity contracts to conduct a pharmacy audit solely based on the amount claimed or the actual amount recouped by the pharmacy being audited.
(4) The auditing entity shall provide the pharmacy being audited with at least fourteen calendar days’ prior written notice before conducting a pharmacy audit unless both parties agree otherwise. If a delay of the audit is requested by the pharmacy, the pharmacy shall provide notice to the pharmacy benefits manager within seventy-two hours of receiving notice of the audit.

(5) The auditing entity may not initiate or schedule a pharmacy audit without the express consent of the pharmacy during the first five business days of any month for any pharmacy that averages in excess of six hundred prescriptions filled per week.

(6) The auditing entity shall accept paper or electronic signature logs that document the delivery of prescription or nonproprietary drugs and pharmacist services to a health plan beneficiary or the beneficiary’s caregiver or guardian.

(7) Prior to leaving the pharmacy after the on-site portion of the pharmacy audit, the auditing entity shall provide to the representative of the pharmacy a complete list of pharmacy records reviewed.

(8) A pharmacy audit that involves clinical judgment shall be conducted by, or in consultation with, a pharmacist.

(9) A pharmacy audit may not cover:

(A) A period of more than twenty-four months after the date a claim was submitted by the pharmacy to the pharmacy benefits manager or covered entity unless a longer period is required by law; or

(B) More than two hundred fifty prescriptions: Provided, That a refill does not constitute a separate prescription for the purposes of this subparagraph.

(10) The auditing entity may not use extrapolation to calculate penalties or amounts to be charged back or
recouped unless otherwise required by federal requirements or federal plans.

(11) The auditing entity may not include dispensing fees in the calculation of overpayments unless a prescription is considered a misfill. As used in this subdivision, “misfill” means a prescription that was not dispensed, a prescription error, a prescription where the prescriber denied the authorization request or a prescription where an extra dispensing fee was charged.

(12) A pharmacy may do any of the following when a pharmacy audit is performed:

(A) A pharmacy may use authentic and verifiable statements or records, including, but not limited to, medication administration records of a nursing home, assisted living facility, hospital or health care provider with prescriptive authority, to validate the pharmacy record and delivery; and

(B) A pharmacy may use any valid prescription, including but not limited to medication administration records, facsimiles, electronic prescriptions, electronically stored images of prescriptions, electronically created annotations or documented telephone calls from the prescribing health care provider or practitioner’s agent, to validate claims in connection with prescriptions or changes in prescriptions or refills of prescription or nonproprietary drugs. Documentation of an oral prescription order that has been verified by the prescribing health care provider shall meet the provisions of this subparagraph for the initial audit review.

(b) An auditing entity shall provide the pharmacy with a written report of the pharmacy audit and comply with the following requirements:

(1) A preliminary pharmacy audit report must be delivered to the pharmacy or its corporate parent within
sixty calendar days after the completion of the pharmacy audit. The preliminary report shall include contact information for the auditing entity that conducted the pharmacy audit and an appropriate and accessible point of contact, including telephone number, facsimile number, e-mail address and auditing firm name and address so that audit results, procedures and any discrepancies can be reviewed. The preliminary pharmacy audit report shall include, but not be limited to, claim level information for any discrepancy found and total dollar amounts of claims subject to recovery.

(2) A pharmacy shall be allowed at least thirty calendar days following receipt of the preliminary audit report to respond to the findings of the preliminary report.

(3) A final pharmacy audit report shall be delivered to the pharmacy or its corporate parent no later than ninety calendar days after completion of the pharmacy audit. The final pharmacy audit report shall include any response provided to the auditing entity by the pharmacy or corporate parent and shall consider and address such responses.

(4) The final audit report may be delivered electronically.

(5) A pharmacy may not be subject to a charge-back or recoupment for a clerical or recordkeeping error in a required document or record, including a typographical or computer error, unless the error resulted in overpayment to the pharmacy.

(6) An auditing entity conducting a pharmacy audit or person acting on behalf of the entity may not charge-back, recoup or collect penalties from a pharmacy until the time to file an appeal of a final pharmacy audit report has passed or the appeals process has been exhausted, whichever is later.
§33-51-5. Appeals process.

1 A pharmacy may appeal a final audit report in accordance with the procedures established by the entity conducting the pharmacy audit.


1 (a) The provisions of this article do not apply to an investigative audit of pharmacy records when:

3 (1) Fraud, waste, abuse or other intentional misconduct is indicated by physical review or review of claims data or statements; or

5 (2) Other investigative methods indicate a pharmacy is or has been engaged in criminal wrongdoing, fraud or other intentional or willful misrepresentation.

9 (b) This article does not supersede any audit 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 Virginia, except as provided in subsection (d) of this
section, a pharmacy benefits manager or auditing entity  
shall register with the Insurance Commissioner. The  
commissioner shall make an application form available on  
its publicly accessible Internet website that includes a  
request for the following information:

(1) The identity, address and telephone number of the  
an applicant;

(2) The name, business address and telephone number  
of the contact person for the applicant; and

(3) When applicable, the federal employer identification  
number for the applicant.

(b) Term and fee. —

(1) The term of registration shall be two years from the  
date of issuance.

(2) The Insurance Commissioner shall determine the  
amount of the initial application fee and the renewal  
application fee for the registration. Such fee shall be  
submitted by the applicant with an application for  
registration. An initial application fee shall be  
nonrefundable. A renewal application fee shall be returned  
if the renewal of the registration is not granted.

(3) The amount of the initial application fees and  
renewal application fees shall be sufficient to fund the  
Insurance Commissioner's duties in relation to its  
responsibilities under this article, but a single fee may not  
exceed $1,000.

(c) Registration. —

(1) The Insurance Commissioner shall issue a  
registration, as appropriate, to an applicant when the  
Insurance Commissioner determines that the applicant has  
submitted a completed application and paid the required  
registration fee.
(2) The registration may be in paper or electronic form, shall be nontransferable and shall prominently list the expiration date of the registration.

(d) Duplicate registration. —

(1) A licensed insurer or other entity licensed by the commissioner pursuant to this chapter shall comply with the standards and procedures of this article but shall not be required to separately register as either a pharmacy benefits manager or auditing entity.

(2) A pharmacy benefits manager that is registered as a third-party administrator pursuant to article forty-six of this chapter shall comply with the standards and procedures of this article but shall not be required to register separately as an auditing entity.


The Insurance Commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate 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 disinfector; 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 §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.**

(a) Any person owning or operating a steam boiler carrying more than fifteen pounds pressure per square inch (except boilers on railroad locomotives subject to inspection under federal laws; portable boilers used for agricultural purposes; boilers on automobiles; boilers of steam fire engines brought into the state for temporary use in times of emergency for the purpose of checking conflagrations; boilers used in private residences which are used solely for residential purposes; any sectional boilers; small portable boilers commonly used in the oil and gas industry about their wells and tool houses; and boilers under the jurisdiction of the United States) in this state shall first obtain a permit to operate a steam boiler from the Commissioner of Labor, or from an inspector working under his or her jurisdiction.

(b) Applications for permits to operate a steam boiler must be accompanied by a sworn statement made by the owner or operator of such boiler, setting forth the condition of the boiler and its appurtenances at which time, if the facts disclosed by such statement meet the safety requirements established under this article, the Commissioner of Labor shall issue a temporary permit, which shall be valid until
such boiler has been inspected by a boiler inspector authorized by the state Commissioner of Labor; thereupon, if the boiler meets the safety requirements established under this article, the Commissioner of Labor shall issue an annual permit to operate such steam boiler: Provided, That boilers which are insured by an insurance company operating in this state and which are inspected by such insurance company’s boiler inspector shall not be subject to inspection by the state Division of Labor, during any twelve-month period during which an inspection is made by the insurance company’s boiler inspector.

(c) The Commissioner of Labor or state boiler inspector shall have the authority to inspect steam boilers in this state. To carry out the provisions of this section, the Commissioner of Labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class. The Commissioner of Labor may revoke any permit to operate a steam boiler if the rules prescribed by the Commissioner of Labor, or his or her authorized representative, are violated or if a condition shall prevail which is hazardous to the life and health of persons operating or employed at or around the boiler. Any person or corporation who shall operate a steam boiler for which a permit is necessary under the provisions of this section, without first obtaining such permit to operate a steam boiler, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500. Every day a steam boiler requiring a permit to operate is operated without the permit is a separate offense.

(d) The commissioner shall charge an annual fee to be established by legislative rule for the inspection of boilers by the division, for the processing of inspection reports from insurance companies, for the issuing of annual permits to operate boilers and for the commissioning of insurance company boiler inspectors. The commissioner shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the
implementation and enforcement of this section. No fee may be charged for the inspection of boilers used on mobile equipment or vehicles used for occasional entertainment or display purposes.

(e) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Steam Boiler Fund and expended for the implementation and enforcement of this section. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this section may be utilized by the commissioner as needed to meet the division’s funding obligations.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications and procedures for submitting applications, taking examinations and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in section ten-a of this article;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: Provided, That to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to section six, article eleven, chapter twenty-one of the code;

(3) Qualifications and supervision requirements for elevator apprentices;
(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article:
Provided, That in no event may the fees established for the issuance of certificates of operation exceed $90.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury known as the Elevator Safety Fund and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner or his or her authorized representatives may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-8. Crane Operator Certification Fund; fees; disposition of funds.

(a) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account known as the Crane Operator Certification Fund in the State Treasury and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this
article may be utilized by the commissioner as needed to meet the division’s funding obligations.

(b) The commissioner may set reasonable application fees for the issuance or renewal of certificates and other 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.

(a) No person, firm or corporation shall administer a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he or she:

(1) Is at least twenty-one years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the Commissioner of Labor or under his or her supervision to determine his or her competency to obtain a license to practice as an examiner;
(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the Commissioner of Labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American Polygraph Association.

c) The Commissioner of Labor may designate and administer any test he or she considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector or similar examination. The test shall be designed to ensure that the applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant’s knowledge of and familiarity with all aspects of operating psychophysiological detection of deception equipment and administering psychophysiological detection of deception examinations.

d) The license to administer psychophysiological detection of deception, lie detector or similar examinations to any person shall be issued for a period of one year. It may be reissued from year to year. The licenses to be issued are:

   (1) “Class I license” which authorizes an individual to administer psychophysiological detection of deception examinations for all purposes which are permissible under the provisions of this article and other applicable laws and rules.

   (2) “Class II license” which authorizes an individual who is a full-time employee of a law-enforcement agency to administer psychophysiological detection of deception examinations to its employees or prospective employees only.
(e) The Commissioner of Labor shall charge an annual fee to be established by legislative rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Psychophysiological Examiners Fund and expended for the implementation and enforcement of this section. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this section may be utilized by the commissioner as needed to meet the division’s funding obligations. In addition to any other information required, an application for a license shall include the applicant’s Social Security number.

(f) The Commissioner of Labor shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code governing the administration of psychophysiological detection of deception, lie detector or similar examination to any person: Provided, That all applicable rules in effect on the effective date of sections five-a, five-b, five-c and five-d of this article will remain in effect until amended, withdrawn, revoked, repealed or replaced. The legislative rules shall include:

1. The type and amount of training or schooling necessary for a person before which he or she may be licensed to administer or interpret a psychophysiological detection of deception, lie detector or similar examination;
2. Testing requirements including the designation of the test to be administered to persons applying for licensure;
3. Standards of accuracy which shall be met by machines or other devices to be used in psychophysiological detection of deception, lie detector or similar examination;
4. The conditions under which a psychophysiological detection of deception, lie detector or similar examination may be administered;
(5) Fees for licenses, renewals of licenses and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of 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.

(a) No manufacturer, dealer, distributor or contractor shall engage in business in this state without first having applied for and received a license pursuant to this section. The license shall authorize the holder to engage in the business permitted by the license. All license applications shall be accompanied by the required fee and surety bond or other form of assurance or fee assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

(b) All licenses shall be granted or refused within thirty days after proper and complete application. All licenses shall expire on June 30 of each year, unless sooner revoked or suspended. Applications shall be deemed valid for a period of thirty days.

(c) The annual license fees shall be in the amounts prescribed from time to time by rules promulgated by the board but in no event less than the following amounts:

(1) For manufacturers, $300;

(2) For dealers, $100;

(3) For distributors, $100; and
(4) For contractors, $50: Provided, That if a contractor has met the licensing requirements of this article and the West Virginia Contractor Licensing Act in article eleven of this chapter, has paid the annual license fee under section eight of said article and has furnished bond or other assurance or fee under section ten of this article, he or she shall not be required to pay the annual license fee set forth in this section.

(d) The board shall prescribe the form of license and each license shall have affixed thereon the seal of the state Division of Labor.

(e) Each licensee shall conspicuously display the license in its established place of business.

(f) Pursuant to such rules and regulations as may be promulgated by the board, the board may deny the issuance of a license or revoke or suspend any license.

(g) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury to be known as the State Manufactured Housing Administration Fund. Expenditures from the fund shall be for the administration and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

§21-10-4. Inspection and permit fees.

(a) The division shall charge inspection and permit fees. The annual permit fee is $100 for each ride or attraction. The annual inspection fee, if an inspection is to be done by the division, is $100 for each ride or attraction. The annual inspection fee, if an inspection is
to be done by the division, is due at the time of application for the annual permit. The division shall waive the inspection fee for any ride or attraction whose owner provides proof of nonprofit business status or for any ride or attraction whose owner provides proof that an inspection has been completed within the last year by a certified special inspector as provided in section six of this article.

(b) The division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any owner or operator requires an inspection as the result of a violation of the permitting requirements of section six of this article, the division shall charge the owner or operator $75 per hour in addition to the established inspection fee, including travel time.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury known as the Amusement Rides and Amusement Attractions Safety Fund and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

(d) No inspection fee may be charged public agencies.

(e) The division shall issue, and the owner, operator or both of the amusement rides and amusement attractions shall visibly display to the public, inspection stickers denoting and signifying that the inspection and permit fee authorized by this section has been paid or waived.
ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-17. Recordkeeping; fees.

(a) The division shall keep a record of all actions taken and account for moneys received. All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury to be known as the West Virginia Contractor Licensing Board Fund and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

(b) The division shall maintain at its principal office, open for public inspection during regular office hours, a complete indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses. Applications shall show the date of application, name, qualifications, place of business and place of residence of each applicant; and whether the application was approved or refused.

(c) (1) All investigations, complaints, reports, records, proceedings and other information received by the commissioner and board and related to complaints made to the commissioner or board or investigations conducted by the commissioner or board pursuant to this article, including the identity of the complainant or respondent, shall be confidential and shall not be knowingly and improperly disclosed by any member or former member of the board, the commissioner or staff, except as follows:

(A) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of this article, the complaint and all reports, records, nonprivileged and nondeliberative materials introduced at any probable cause
hearing held pursuant to the complaint are thereafter not confidential: Provided, That confidentiality of such information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges.

(B) Any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at such subsequent hearing, as well as the board’s and commissioner’s orders, are not confidential.

(C) The commissioner or board may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any such complaint filed immediately upon such respondent’s request.

(E) Where the commissioner or board is otherwise required by the provisions of this article to disclose such information or to proceed in such a manner that disclosure is necessary and required to fulfill such requirements.

(2) If, in a specific case, the commissioner or board finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commissioner or board shall order that all or a portion of the information communicated to the commissioner or board to cause an investigation and all allegations of violations or misconduct contained in a complaint shall be confidential, and the person providing such information or filing a complaint shall be bound to confidentiality until further order of the board.
(d) If any person violates the provisions of subsection (c) of this section by knowingly and willfully disclosing any information made confidential by such section or by the commissioner or board, such person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000, or confined in jail not more than one month, or both fined and confined.

(e) The commissioner shall certify to the State Auditor and to the board a detailed statement of all moneys received and spent during the preceding fiscal year.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.


All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in a special revenue account in the State Treasury to be known as the Plumbing Work Fund and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

ARTICLE 15. ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT.


(a) The division shall charge inspection and permit fees. The annual permit fee is $100 for each zipline or canopy tour.

(1) The annual inspection fee, if an inspection is to be done by the division, is $100 for each zipline or canopy tour.

(2) The annual inspection fee, if an inspection is to be done by the division, is due at the time of application for the annual permit.
(3) The division shall waive the inspection fee for a zipline or canopy tour whose operator provides proof of nonprofit business status or for any zipline or canopy tour whose operator provides proof that an inspection has been completed within the last year by a certified special inspector as provided in section nine of this article.

(b) The division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any operator requires an inspection as the result of a violation of the permitting requirements of section nine of this article, the division shall charge the operator $75 per hour in addition to the established inspection fee, including travel time.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury known as the Amusement Rides and Amusement Attractions Safety Fund and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

(d) No inspection fee may be charged public agencies.

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-10. Disposition of fees.

All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the HVAC Fund and expended for the implementation and enforcement of this article. Amounts
collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

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.

(a) The uniform regulation for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices as adopted by The National Conference of Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations and supplements thereto or revisions thereof, shall apply to the registration of service persons and service agencies in the state, except insofar as modified or rejected by legislative rule.

(b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee for service persons and service agencies to be established by legislative rule. The commissioner may file an emergency rule prior to January 1, 2018, to implement and administer the amendments made to this section during the 2017 regular session. The commissioner may also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.

(c) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund for use by the commissioner for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be
§47-1-20. State measurement laboratory.

(a) The commissioner shall operate and maintain a state measurement laboratory certified and approved by the National Institute of Standards and Technology. The laboratory shall be used to both house and maintain the state primary standards and secondary standards as traceable to the national standards and to test or calibrate any secondary or working standards which are submitted for test as required by this article.

(b) The commissioner shall promulgate rules, pursuant to chapter twenty-nine-a of this code to assess fees for weights and measures laboratory calibration and testing. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited into an appropriated special revenue account in the State Treasury to be known as the Weights and Measures Fund and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

(c) The commissioner shall provide such personnel as required to operate the laboratory in a manner which is consistent with the needs of this article. Personnel shall be trained and certified to perform all such calibrations and tests as required by the National Institute of Standards and Technology to maintain traceability of the state standards to national standards, and to properly maintain the laboratory facility as certified and traceable to the National Institute of Standards and Technology.


(a) On or before October 1, 1994, every commercial business in the state which, in the course of conducting
business, utilizes weights, measures and weighing and measuring devices covered by this article shall obtain a certificate of device registration for the commercial devices covered by this article, from the division. After October 1, 1994, it shall be unlawful in the state to conduct business subject to the provisions of this article without having first obtained a certificate of device registration from the division. Application for a certificate of device registration shall be made on a form provided by the division.

(b) A certificate of device registration is valid for twelve months from the date of issue. The certificate of device registration shall be posted within the place of business.

(c) Application for the renewal of a certificate of device registration shall be made on a form provided by the division at least thirty days prior to the renewal due date. The commissioner may deny the renewal of device registration for cause where the cause is the result of the conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

(d) Beginning January 1, 2018, the division shall charge an annual device registration fee, to be established by legislative rule. The commissioner may file an emergency rule prior to January 1, 2018, to implement and administer the amendments made to this section during the 2017 regular session. The commissioner may also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.

(e) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund for use by the commissioner for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.
§47-1-22. Civil penalties.

(a) No person may:

1. Use or have in possession for use in commerce any incorrect weight or measure;

2. Sell or offer for sale for use in commerce any incorrect weight or measure;

3. Remove any tag, seal or mark from any weight or measure, without specific authorization from the Weights and Measures Section; or

4. Violate any provisions of this article or rules promulgated under it, not defined in subsection (a), section twenty-three of this article.

(b) Any person who violates subsection (a) of this section or any rule promulgated by the commissioner may be assessed a civil penalty by the commissioner, which penalty may not be more than $1,000 for each violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the person’s history of previous violations, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

(c) All civil penalties paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund for use by the commissioner for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.
(d) A civil penalty may be assessed by the commissioner only after the commissioner has given at least ten days’ notice to the person. Notice shall be in writing, shall contain a short, plain statement of the matter asserted and shall designate a time and place for a hearing where the person may show cause why the civil penalty should not be imposed. Notice of hearing shall be sent by certified mail. The person may, at the time designated for the hearing, produce evidence on his or her behalf and be represented by counsel.

(e) Any person aggrieved by a decision of the commissioner has the right to a contested case hearing under 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.

(a) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. Such permit shall expire one year from date of issue.

(b) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall 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.

(a) The annual registration fee for all manufacturers shipping or selling articles of bedding and for upholsterers or renovators, as defined in this article, in the State of West Virginia shall be $90, payable on the first day of the fiscal year. Any manufacturer, upholsterer or renovator who submits an annual registration fee on or after July 16 shall pay a $25 late fee in addition to the annual fee.

(b) The annual sterilizer permit fee shall be $90, payable on the first day of the fiscal year. Any sterilizer who submits an annual permit fee on or after July 16 shall pay a $25 late fee in addition to the annual fee.

(c) The fee for reissuing a revoked or expired registration or permit shall be $90.

(d) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Bedding and Upholstery Fund and expended for the implementation and enforcement of this article. Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations.

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.

This article is known as and may be cited as the West Virginia Safer Workplace Act.

§21-3E-2. Definitions.

For the purposes of this article:

“Alcohol” means ethanol, isopropanol, or methanol.
“Drugs” means any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act (21 U. S. C. §812).

“Employer” means any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, which has one or more full-time employee employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written in the state. “Employer” does not include, for purposes of this article, the United States, the state, any of its subdivisions or any other public-sector incorporated municipalities, counties, or other local government entities, or any Native American tribe.

“Employee” means any person in the service of an employer, as defined in this section.

“Good faith” means reasonable reliance on facts, or that which is held to be factual without the intent to deceive or be deceived and without reckless, malicious or negligent disregard for the truth.

“Prospective employee” means any person who has made application to an employer, whether written or oral, to become an employee.

“Sample” means such sample of the human body capable of revealing the presence of alcohol or other drugs or other metabolites.

“Split sample” means a part of the sample that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test result of the primary specimen.

§21-3E-3. Public policy; applicability.

The Legislature declares that the public policy of this state is to advance the confidence of West Virginia workers
that they are in a safe workplace and to enhance the viability of the workplace they labor in by recognizing the right of West Virginia’s employers to require mandatory drug testing, not only of applicants, but of current employees: Provided, That this article does not abrogate the right of privacy, including the right of an individual to be let alone and to keep secret his or her private communications, conversations and affairs, as stated in Roach v. Harper, 143 W. Va. 869, but rather determines that the right of privacy is outweighed by the public policy stated in this section if an employer meets the requirements set forth in this article.

This article applies only to employers, as defined in section three of this article, not previously made subject of drug and alcohol testing statutory provisions established by the Legislature including, but not limited to, employers covered by section one, article one-a, chapter twenty-two-a of the code, et seq., and section one, article one-d, chapter twenty-one of the code et seq.

§21-3E-4. Employers may test current and prospective employees for drugs or alcohol.

It is lawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this article, as a condition of continued employment or hiring. However, in order to qualify for a bar from being subjected to legal claims for acting in good faith on the results of a drug or alcohol test, employers must adhere to the accuracy and fairness safeguards outlined in this article.

§21-3E-5. Collection of samples.

In order to test reliably for the presence of drugs or alcohol, an employer may require samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of the sample shall be in conformance with the
requirements of this article. The employer may designate the type of sample to be used for this testing.

§21-3E-6. Scheduling of tests.

Regarding the timing and costs of drug and/or alcohol tests, and in order for an employer to qualify for the benefits of this article:

(1) Any drug or alcohol testing by an employer of employees shall occur during, or immediately before or after, a regular work period. Testing by an employer is worked time for the purposes of compensation and benefits for current employees.

(2) An employer shall pay all actual costs for drug and/or alcohol testing required by the employer of employees and prospective employees.

(3) An employer is required to provide transportation or to pay reasonable transportation costs to current employees if their required tests are conducted at a location other than the employee’s normal work site(s).

§21-3E-7. Testing procedure.

All sample collection and testing of drugs and alcohol under this article shall be performed in accordance with the following conditions:

(1) The collection of samples shall be performed under reasonable and sanitary conditions.

(2) Any observer of the collection of urine samples shall be of the same sex as the employee.

(3) Sample collections shall be documented, and these documentation procedures shall include:

(A) Labeling of samples so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided and handling of samples
in accordance with reasonable chain-of-custody and confidentiality procedures; and

(B) An opportunity for the employee, or prospective employee, to voluntarily provide notification of any information which may be considered as relevant to the test, including, but not limited to, identification of currently or recently used prescriptions or nonprescription drugs, or other relevant medical information. This may be accomplished by providing procedures for review by a qualified medical professional to verify a laboratory sample which tests positive in a confirmatory test.

(4) Sample collection, storage and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

(5) Confirmatory drug testing shall be conducted at a laboratory: (i) Certified by the U. S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration; (ii) approved by the U. S. Department of Health and Human Services under the Clinical Laboratory Improvements Act; or (iii) approved by the College of American Pathologists.

(6) Drug and alcohol testing shall include confirmation of any positive test results. For drug testing, confirmation will be by use of a different chemical process than was used by the employer in the initial drug screen. The second confirmatory drug test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method. An employer may take any adverse employment action, including job denial to a prospective employee, based only on a confirmed positive drug or alcohol test.

In the event a person desires to challenge the results of his or her initial sample test result, that person shall have the right to have the split sample tested by another laboratory as
set forth in subsection four. The cost associated with the testing of the split sample shall be the responsibility of the person challenging the initial sample test results.

§21-3E-8. Testing policy requirements.

(a) Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy which has been distributed to every employee subject to testing, and is available for review by prospective employees.

(b) In order to comply with the provisions of this article, employers must provide employees, when requested and/or as appropriate, with information as to the existence and availability of counseling, employee assistance, rehabilitation and/or other drug abuse treatment programs which the employer offers, if any. The employer is not required to offer any of the benefits listed above by this article.

(c) Within the terms of the written policy, an employer may require the collection and testing of samples for, among other legitimate drug abuse prevention and/or treatment purposes, the following:

(1) Deterrence and/or detection of possible illicit drug use, possession, sale, conveyance, or distribution, or manufacture of illegal drugs, intoxicants, or controlled substances in any amount or in any manner, on or off the job, or the abuse of alcohol or prescription drugs;

(2) Investigation of possible individual employee impairment;

(3) Investigation of accidents in the workplace or incidents of workplace theft or other employee misconduct;

(4) Maintenance of safety for employees, customers, clients or the public at large; or
(5) Maintenance of productivity, quality of products or services, or security of property or information.

(d) The collection and testing of samples shall be conducted in accordance with this article and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee.

(e) The employer’s use and disposition of all drug or alcohol test results are subject to the limitations of this article and federal and state law if the employer is to qualify for the legal protections available under this article.

(f) Nothing in this article may be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug or alcohol testing.


Upon receipt of a confirmed positive drug or alcohol test result which indicates a violation of the employer’s written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary and/or rehabilitative actions, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment and/or counseling program, which may include additional drug and/or alcohol testing, participation in which may be a condition of continued employment, and the costs of which may or may not be covered by the employer’s health plan or policies;

(2) Suspension of the employee, with or without pay, for a designated period of time;

(3) Termination of employment;
(4) Refusal to hire a prospective employee; and/or

(5) Other adverse employment action in conformance with the employer’s written policy and procedures, including any relevant collective bargaining agreement provisions.

§21-3E-10. Sensitive employees.

If the confirmatory drug or alcohol test of an employee is “positive,” and the employee is in a sensitive position where an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, the employer may permanently remove the employee from the sensitive position and transfer or reassign the employee to an available nonsensitive position with comparable pay and benefits, or may take any other action, including termination or other adverse employment action, consistent with the employer’s policy for confirmed positive drug or alcohol test for employees in sensitive positions, provided there are not applicable contractual provisions that expressly prohibit such action.

Employers 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.

§21-3E-11. Protection from liability.

No cause of action is or shall be established for any person against any employer who has established a policy and initiated a testing program in accordance with this article, for any of the following:

(1) Actions based on the results of a confirmed positive drug or alcohol test, or the refusal of an employee or job applicant to submit to a drug test;

(2) Failure to test for drugs or alcohol, or failure to test for a specific drug or other controlled substance;
(3) Failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition, any mental, emotional, or psychological disorder or condition; or

(4) Termination or suspension of any substance abuse prevention or testing program or policy.

§21-3E-12. Cause of action.

(a) No cause of action is or shall be established for any person against an employer who has established a program of drug or alcohol testing in accordance with this article, unless the employee’s action was based on a false positive test result, and the employer had actual knowledge that the result was in error, and ignored the true test result because of disregard for the truth and/or the willful intent to deceive or be deceived.

(b) In any claim, including a claim under this article, where it is alleged that an employer’s action was based on a false positive test result:

(1) There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of this article; and

(2) The employer is not liable for monetary damages if its reliance on a false positive test result was reasonable and in good faith.

(c) There is no employer liability for any action taken related to a false negative drug or alcohol test.


No cause of action for defamation of character, libel, slander or damage to reputation is or shall be established for any person against any employer who has established a program of drug or alcohol testing in accordance with this article, unless:
(1) The results of that test were disclosed to a person other than the employer, an authorized employee, agent or representative of the employer, the tested employee, or the tested prospective employee, or the authorized agent or representative of the employee; and

(2) All elements of an action for defamation of character, libel, slander or damage to reputation as established by the relevant state statute or common law are satisfied.

§21-3E-14. No requirement to implement a testing policy.

No cause of action arises in favor of any person against an employer based upon the failure of the employer to establish a program or policy on substance abuse prevention, or to implement drug or alcohol testing.


All communications received by an employer relevant to employee or prospective employee drug or alcohol test results and received through the employer’s drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer under this article.

§21-3E-16. Employer testing; notice; termination; forfeiture.

If an employer implements a drug-free workplace program in accordance with this article, which includes notice, education and procedural requirements for testing for drugs and alcohol pursuant to this law, the employer may require the employee to submit to a test for the presence of drugs or alcohol. If a drug or alcohol is found to be present in the employee’s system at a level proscribed by the employer’s policy, the employee may be terminated and forfeits his or her eligibility for unemployment compensation benefits and, if injured at the time of the
intoxication, indemnity benefits under the Worker Compensation Laws. However, the employer’s drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that if an injured employee refuses to submit to a test for drugs or alcohol, that employee forfeits eligibility for unemployment compensation benefits, and if injured, for indemnity benefits under the Worker Compensation Laws. Employers who do not notify their employees of this condition of employment waive their right to assert that eligibility for benefits is entirely forfeited.

Nothing herein may be construed or deemed to affect subsection (a), section two, article four, chapter twenty-three of this code and the provisions of said section shall be the sole manner in which intoxication may be proven to establish such intoxication as the proximate cause of an 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.


(a) Bond required. — With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least one year next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the State of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or her
or its employees when due. The amount of the bond shall be equal to the total of the employer’s gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer’s gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer’s payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner’s approval and determination that there are not outstanding claims against the bond: Provided, however, That if the employer, person, firm or corporation meets one of the following, then such employer, person, firm or corporation shall be exempt from the requirements of this subsection:

1. Has been in business in another state for at least five years;
2. Has at least $100,000 in assets; or
3. Is a subsidiary of a parent company that has been in business for at least five years.

(b) Waiver. — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his or her determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) Form of bond; filing in office of circuit clerk. — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United
States or its possessions, or of the federal land bank, or of the homeowner’s loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the State Treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the State Treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) **Employee cause of action.** — Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) **Action of commissioner.** — Any employee having wages and fringe benefits unpaid may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he or she shall make demand of
such employer for the payment of such wages and fringe
benefits. If payment for such wages and fringe benefits is
not forthcoming within the time specified by the
commissioner, not to exceed thirty days, the commissioner
shall certify such claim or portion thereof, and forward the
certification to the bonding company or the State Treasurer,
who shall provide payment to the affected employee within
fourteen days of receipt of such certification. The bonding
company, or any person, firm or corporation posting a bond,
thereafter shall have the right to proceed against a defaulting
employer for that part of the claim the employee paid. The
procedure specified herein shall not be construed to
preclude other actions by the commissioner or employee to
seek enforcement of the provisions of this article by any
civil proceedings for the payment of wages and fringe
benefits or by criminal proceedings as may be determined
appropriate.

(f) Posting and reporting by employer. — With the
exception of those exempt under subsection (a) of this
section, any employer who is engaged in construction work
or the severance, production or transportation (excluding
railroad and water transporters) of minerals shall post the
following in a place accessible to his or her or its employees:

(1) A copy of the bond or other evidence of surety
specifying the number of employees covered as provided
under subsection (a) of this section, or notification that the
posting of a bond has been waived by the commissioner;
and

(2) A copy of the notice in the form prescribed by the
commissioner regarding the duties of employers under this
section. During the first year that any person, firm or
corporation is doing business in this state in construction
work, or in the severance, production or transportation of
minerals, such person, firm or corporation shall on or before
February 1, May, August and November of each calendar
year file with the department a verified statement of the
number of employees, or a copy of the quarterly report filed
with the Bureau of Employment Programs showing the accurate number of employees, unless the commissioner waives the filing of the report upon his or her determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) Termination of bond. — The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least one year and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

(a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain an adequate bond as required by section fourteen of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $200 nor more than $5,000, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

(b) Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with intent to deprive employees of their wages and fringe benefits is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $60,000, or imprisoned in the state correctional facility not less than one nor more than three years, or both fined and imprisoned.
(c) (1) At any time the commissioner determines that a person, firm or corporation has not provided or maintained an adequate bond, as required by section fourteen of this article, the commissioner shall issue a cease and desist order which is to be issued and posted requiring that said person, firm or corporation either post an adequate bond or cease further operations in this state within a period specified by the commissioner; which period shall be not less than five nor more than fourteen days. The cease and desist order may be issued by the commissioner at his or her own instance or at his or her direction, with or without application to or the approval of any other officer, agent, department or employee of the state or application to any court for approval thereof. Any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after such specified period shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $5,000 nor more than $30,000, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned. Any cease and desist order issued by the commissioner pursuant to this subsection may be directed by the commissioner to the sheriff of the county wherein the business activity of which the order is the subject, or to any officer or employee of the department, commanding such sheriff, officer or employee to serve such order upon the business in question within seventy-two hours and to make proper return thereof.

(2) Any other provision of law to the contrary notwithstanding, any person against whom a cease and desist order has been directed shall be entitled to judicial review thereof by filing a verified petition taking an appeal therefrom within fifteen days from the date of service of such order. Such verified petition shall be filed in the circuit court of the county wherein service of the order was completed, at the option of the petitioner, or in the circuit court of Kanawha County, West Virginia. If the appeal is not perfected within such fifteen-day period, the cease and
desist order shall be final and shall not thereafter be subject to judicial review. No appeal shall be deemed to have been perfected except upon the filing with the clerk of the circuit court of the county wherein the appeal is taken, of a bond or other security to be approved by the court, in an amount of not less than the amount of the bond otherwise required to be posted under the provisions of section fourteen of this article. The person so filing a petition of appeal shall cause a copy of the petition and bond or other posted security to be served upon the commissioner by certified mail, return receipt requested, within seven days after the date upon which the petition for appeal is filed.

(d) Any person who threatens any officer, agent or employee of the department or other person authorized to assist the commissioner in the performance of his or her duties under any provision of section fourteen of this article or of this section or who shall interfere with or attempt to prevent any such officer, agent, employee or other person in the performance of such duties shall be guilty of a felony and, upon conviction thereof, shall be fined in an amount of not less than $1,000 nor more than $3,000 or imprisoned in the penitentiary not less than one nor more than three years, 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.

As used in this article:

(1) The term “person” means any individual, proprietorship, partnership, firm, association, corporation, labor organization or any other legal entity.

(2) The term “labor organization” means any organization, agency, union or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay or other terms or conditions of employment.

(3) The term “employer” means any person employing at least one individual in the state or any agent of an employer employing at least one individual in the state.

§21-5G-7. Applicability; severability.

(a) Applicability. — This article applies to any written or oral contract or agreement entered into, modified, renewed or extended on or after July 1, 2016: Provided, that the provisions of this article do not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.
(b) *Severability.* — If any provision of this article or the application of any such provision of this article to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this article or the application of its provisions to persons or circumstances other than those to which it is held invalid is not affected 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.

(a) The legislative rule filed in the State Register on August 22, 2016, authorized under the authority of section two, article twelve-d, chapter twenty-nine of this code, modified by the Board of Risk and Insurance Management to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 12, 2016, relating to the Board of Risk and Insurance Management (Patient Injury Compensation Fund, 115 CSR 07), is authorized.

(b) The legislative rule filed in the State Register on August 22, 2016, authorized under the authority of section fifteen, article thirty, chapter thirty-three of this code, modified by the Board of Risk and Insurance Management to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 12, 2016, relating to the Board of Risk and Insurance Management (mine subsidence insurance, 115 CSR 01), is authorized.

§64-2-2. Ethics Commission.

The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section two, article two, chapter six-b of this code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Ethics Commission (use of office for private gain, including nepotism, 158 CSR 06), is authorized.