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**Regular Session, 2018**

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<td>3.</td>
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<td>Exempting military retirement income from personal income tax</td>
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## ACTS

Third Extraordinary Session, 2017

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### GENERAL LAWS

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**ROADS AND HIGHWAYS**

1. (SB3001) Authorizing sale of bonds pursuant to Roads to Prosperity Amendment of 2017

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<td>Hill, Jordan C. (R)</td>
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<td>Elizabeth</td>
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[XXI]
MEMBERS OF THE HOUSE OF DELEGATES - Continued

Householder, Eric L. (R) .............................. 64th ......... Martinsburg .............. Small Business Owner ......................................................... 80th - 83rd
Howell, Gary G. (R) ..................................... 56th ......... Keyser .................... Small Business Owner ......................................................... 80th - 83rd
Jaquinta II, Richard J. (D) ..................... 48th ......... Clarksburg .............. Teacher/Coach ......................................................... 76th - 81st; 83rd
Isner, Phil (D) ........................................... 43rd ......... Elkins .............. Attorney ......................................................... 83rd
Kelly, John R. (R) ...................................... 10th ......... Parkersburg ............ Retired, Chemical Industry ............................................. 82nd - 83rd
Kessinger, Kayla (R) ............................... 32nd ......... Mount Hope .......... Director of Human Resources ............................................. 82nd - 83rd
Lane, Charlotte R. (R) ......................... 35th ......... Charleston .............. Lawyer ......................................................... 64th; 67th; 70th; 73rd
Longstreth, Linda (D) ............................ 50th ......... Fairmont .............. Administrator/Educator ............................................. 71st - 83rd
Love, Shirley (D) ....................................... 32nd ......... Oak Hill .............. Retired ............................................. Appt. 8/8/1994, 71st (Senate); 72nd - 78th (Senate); 83rd (House)
Lovejoy, Chad (D) ..................................... 17th ......... Huntington ............. Attorney ......................................................... 83rd
Lynch, Dana (D) ....................................... 44th ......... Webster Springs ....... Retired ......................................................... 81st - 83rd
Marcum, Justin (D) ................................. 20th ......... Williamson .......... Attorney ............................................. Appt. 1/21/2012, 80th; 81st - 83rd
Martin, Patrick S. (R) ............................. 46th ......... Weston .............. Business Owner ......................................................... 83rd
Maynard, Zack (R) .................................. 22nd ......... Harts .............. Self-Employed ......................................................... 83rd
McGeachan, Pat (R) .................................. 1st ......... Chester .............. Business Sales/Author ......................................................... 79th - 83rd
Miley, Timothy (D) ................................... 48th ......... Bridgeport ............. Attorney ......................................................... 77th - 83rd
Miller, Carol (R) ....................................... 16th ......... Huntington .............. Small Business Owner/Buffalo Farmer ................................. 78th - 83rd
Miller, Rodney (D) .................................... 23rd ......... Madison .......... Retired Sheriff/Executive Director Sheriff's Assn ....... 83rd
Moore, Riley (R) ....................................... 67th ......... Halfhilltown .......... Small Business Owner ......................................................... 83rd
Moye, Rick (D) ......................................... 29th ......... Crab Orchard ........ Businessman/School Bus Operator ............................................. 78th - 83rd
Nelson, Eric Jr. (R) .................................. 35th ......... Charleston .............. Businessman ......................................................... 80th - 83rd
Overington, John (R) ......................... 62nd ......... Martinsburg .............. Public Relations/Former Educator ......................................................... 67th - 83rd
Pethtel, Dave (D) ..................................... 5th ......... Hundred .............. Educator ......................................................... 69th - 71st; 74th - 83rd
Phillips, Rupert Jr. (R) ................. 24th ......... Lorado ......... Sales Manager ......................................................... 80th - 83rd
Pushkin, Mike (D) ...................................... 37th ......... Charleston ............ Taxi Driver/Musician ......................................................... 82nd - 83rd
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Robinson, Andrew (D) ....................... 36th ......... Charleston .............. Real Estate Appraiser/Broker ......................................................... 83rd
Rodighiero, Ralph (D) ......................... 24th ......... Logan .............. UPS Driver ......................................................... 78th - 80th; 82nd - 83rd
Rohrbach, Matthew (R) ..................... 17th ......... Huntington .............. Physican ......................................................... 82nd - 83rd
Romine, Chuck (R) ............................... 24th ......... Huntington .............. Retired Insurance Agent ......................................................... 75th - 83rd
Romine, William R. (R) ..................... 6th ......... West Union .............. Retired School Administrator ......................................................... 83rd
Rowan, Ruth (R) ..................................... 57th ......... Points ......... Retired Educator ......................................................... 77th - 83rd
Rowe, Larry L. (D) ................................... 36th ......... Charleston .............. Attorney ......................................................... 73rd - 74th (House)
Shott, John (R) ....................................... 27th ......... Bluefield ......... Attorney ......................................................... 79th (Resigned and Appt. to Senate 5/19/2010); 81st - 83rd (House)
Sohonya, Kelli (R) .................................... 18th ......... Barboursville ....... Realtor ......................................................... 76th - 83rd
Sponaugle, Isaac (D) .............................. 55th ......... Franklin .......... Attorney ......................................................... 81st - 83rd
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Storch, Erika (R) ..................................... 3rd ......... Wheeling ...... Financial Officer ......................................................... 80th - 83rd
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Thompson, Robert (D) ......................... 19th ......... Wayne .......... Teacher ......................................................... 83rd
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Zatezalo, Mark (R) ................................... 1st ......... Weirton .......... Hydrogeologist ......................................................... 82nd - 83rd

[XXII]
1 Sergeant-at-Arms Marshall Clay resigned April 1, 2018, and Anne Lieberman was elected on May 21, 2018.
2 Appointed February 12, 2018, to fill the unexpired term of Karen “Lynne” Arvon, who was appointed to the Senate January 23, 2018.
4 Appointed October 10, 2017, to fill the unexpired term of Tony Lewis, who died September 24, 2017.
5 Appointed January 10, 2018, to fill the unexpired term of John O’Neal, who resigned December 22, 2017.
6 Ron Walters resigned March 9, 2018.

ROSTER ADDENDUM
(Other Delegates who served during part of period covered by this publication)


MEMBERS OF THE SENATE

REGULAR SESSION, 2018

OFFICERS

President: Mitch Carmichael – Ripley  
Clerk: Lee Cassis 1 – Charleston  
Sergeant-at-Arms: Andrew Palmer – Charleston  
Doorkeeper: Jeffrey Branham – Cross Lanes

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<td>Manager, Contractor Group</td>
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<td>83rd (House); Appt. to Senate 10/16/2017, 83rd</td>
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<tr>
<td>Woelfel, Mike (D)</td>
<td>5</td>
<td>Huntington</td>
<td>Lawyer</td>
<td>82nd – 83rd</td>
</tr>
</tbody>
</table>

1 Appointed January 6, 2018, to fill the vacancy created by the resignation of the Honorable Clark Barnes, who resigned January 5, 2017, and elected on January 8, 2018, as the 22nd Clerk of the Senate.  
2 Appointed January 23, 2018, to fill the vacancy created by the resignation of Jeff Mullens, who resigned on January 12, 2018.  
3 Appointed October 16, 2017, to fill the vacancy created by the resignation of Ronald Miller, who resigned September 30, 2017.  
4 Appointed September 5, 2017, to fill the vacancy created by the resignation of Mike Hall, who resigned on August 20, 2017.
MEMBERS OF THE SENATE - Continued

ROSTER ADDENDUM
(Other Senators who served during part of period covered by this publication)


AGRICULTURE AND NATURAL RESOURCES

A. Evans (Chair, Agriculture), Hamilton (Chair, Natural Resources), R. Romine (Vice Chair, Agriculture), Ambler (Vice Chair, Natural Resources), Sponaugle (Minority Chair, Agriculture), Rodighiero (Minority Chair, Natural Resources), Thompson (Minority Vice Chair, Agriculture), Hicks (Minority Vice Chair, Natural Resources), Anderson, Atkinson, Cooper, Folk, Hanshaw, Harshbarger, C. Miller, Moore, Overington, Statler, Summers, Wagner, Brewer, Campbell, Eldridge, Love and Lynch.

BANKING AND INSURANCE

Frich (Chair, Banking), Westfall (Chair, Insurance), White (Vice Chair, Insurance), Upson (Vice Chair, Banking), Marcum (Minority Chair, Banking), Hartman (Minority Chair, Insurance), Lovejoy (Minority Vice Chair, Banking), Robinson (Minority Vice Chair, Insurance), Adkins, Capito, Criss, Deem, A. Evans, Householder, Martin, McGeehan, Nelson, C. Romine, Shott, Walters, Bates, Iaquinta, Isner, Rowe and Sponaugle.

EDUCATION

Espinosa (Chair), Statler (Vice Chair), Moye (Minority Chair), Hornbuckle (Minority Vice Chair), Atkinson, Blair, Cooper, Dean, Folk, Higginbotham, Kelly, Rohrbach, R. Romine, Rowan, Upson, Wagner, Westfall, Wilson, Campbell, E. Evans, Hicks, Pyles, Rodighiero, Rowe and Thompson.
ENERGY

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

ENROLLED BILLS (JOINT)

Hanshaw (Chair), Westfall (Vice Chair), Lane, Marcum and Pushkin.

FINANCE

Nelson (Chair), Householder (Vice Chair), Boggs (Minority Chair), Bates (Minority Vice Chair), Ambler, Anderson, Butler, Cowles, Ellington, Espinosa, A. Evans, Frich, Gearheart, Hamilton, C. Miller, Storch, Walters, Westfall, Barrett, Hartman, Longstreth, Moye, Pethetl, Rowe and Sponaugle.

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Statler (Chair), Maynard (Vice Chair), R. Miller (Minority Chair), Lovejoy (Minority Vice Chair), Cooper, Deem, Jennings, Sypolt, Ward, Love and Sponaugle.

GOVERNMENT ORGANIZATION

Howell (Chair), Hamrick (Vice Chair), Ferro (Minority Chair), Diserio (Minority Vice Chair), Adkins, Criss, Graves, Hill, Jennings, Martin, Maynard, McGeehan, Pack, Paynter, C. Romine, Sypolt, Ward, Brewer, Caputo, Eldridge, Iaquinta, Lynch, Marcum, Pyles and Williams.
HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Ellington (Chair), Summers (Vice Chair), Longstreth (Minority Chair), Pushkin (Minority Vice Chair), Atkinson, Butler, Cooper, Criss, Dean, Frich, Hill, Hollen, Householder, Queen, Rohrbach, Rowan, Sobonya, White, Bates, Campbell, Fleischauer, Iaquinta, Love, Robinson and Rodighiero.

INDUSTRY AND LABOR

Fast (Chair), Foster (Vice Chair), Brewer (Minority Chair), Isner (Minority Vice Chair), Blair, Cowles, Dean, Ellington, Harshbarger, Hill, Householder, Jennings, Overington, Shott, Sobonya, Statler, Ward, White, Caputo, Diserio, Ferro, Fluharty, Hicks, R. Miller and Pushkin.

INTERSTATE COOPERATION

Storch (Chair), Hamrick (Vice Chair), Ellington, Higginbotham, R. Romine, Barrett and Ferro.

JUDICIARY

Shott (Chair), Hanshaw (Vice Chair), Fleischauer (Minority Chair), Fluharty (Minority Vice Chair), Capito, Deem, Fast, Foster, Harshbarger, Hollen, Kessinger, Lane, Moore, Overington, Queen, Sobonya, Summers, Zatezalo, Byrd, Canestraro, Isner, Lovejoy, R. Miller, Pushkin and Robinson.

PENSIONS AND RETIREMENT

Hamilton (Vice Chair), Anderson, Hollen, Storch, Walters, E. Evans and Pethtel.

POLITICAL SUBDIVISIONS

Storch (Chair), Blair (Vice Chair), R. Miller (Minority Chair), Williams (Minority Vice Chair), Anderson, Cowles, Folk, Foster, Gearheart, Graves, Hamrick, Hanshaw, Householder, Jennings, Lane,
HOUSE OF DELEGATES COMMITTEES

Rohrbach, Summers, Barrett, Byrd, Canestraro, Longstreth, Moye, Pyles, Robinson and Rowe.

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Ellington (Chair), Kessinger (Vice Chair), Frich, Hollen Sobonya, Storch, Upson, Bates, Boggs, Campbell and Hornbuckle.

ROADS AND TRANSPORTATION

Gearheart (Chair), Capito (Vice Chair), Caputo (Minority Chair), E. Evans (Minority Vice Chair), Ambler, Butler, Criss, Dean, Espinosa, Fast, Hamrick, Howell, Lane, Maynard, Paynter, Phillips, Rohrbach, Statler, Wagner, Boggs, Canestraro, Diserio, Hartman, Moye and Williams.

RULE-MAKING REVIEW (JOINT)

Sobonya (Cochair), Frich (Vice Cochair), Hanshaw, Fleischauer and Rowe.

RULES

Armstead (Chair), Anderson, Cowles, Ellington, Espinosa, Foster, Hanshaw, Howell, C. Miller, Nelson, Overington, Shott, Sobonya, Boggs, Caputo, Ferro, Fleischauer, Miley, Moye and Pethtel.

SENIOR CITIZEN ISSUES

Rowan (Chair), Rohrbach (Vice Chair), Lynch (Minority Chair), Pyles (Minority Vice Chair), A. Evans, Graves, Kelly, Martin, Maynard, Paynter, Queen, C. Romine, R. Romine, Sypolt, Walters, White, Zatezalo, Boggs, Eldridge, Ferro, Fleischauer, Love, Lovejoy, Moye and Pethtel.

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SMALL BUSINESS ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Hill (Chair), Atkinson (Vice Chair), Rowe (Minority Chair), Barrett (Minority Vice Chair), Blair, Espinosa, Higginbotham, Kelly, Kessinger, Martin, C. Miller, Moore, Pack, Phillips, Queen, Storch, Ward, Westfall, Zatezalo, Bates, Byrd, Marcum, Miley, Sponaugle and Thompson.

VETERANS’ AFFAIRS AND HOMELAND SECURITY

Butler (Chair, Homeland Security), Cooper (Chair, Veterans’ Affairs), McGeehan (Vice Chair, Homeland Security), Wagner (Vice Chair, Veterans’ Affairs), Byrd (Minority Chair, Homeland Security), Iaquinta (Minority Chair, Veterans’ Affairs), Baldwin (Minority Vice Chair, Homeland Security), Canestraro (Minority Vice Chair, Veterans’ Affairs), Higginbotham, Hollen, Howell, Kelly, Kessinger, Pack, Paynter, Rowan, Sypolt, Upson, Campbell, Ferro, Fleischauer, Jennings, Longstreth, Lynch and Pushkin.
AGRICULTURE AND RURAL DEVELOPMENT

Sypolt (Chair), Rucker (Vice Chair), Clements, Cline, Mann, Maynard, Smith, Baldwin, Beach, Ojeda and Woelfel.

BANKING AND INSURANCE

Azinger (Chair), Clements (Vice Chair), Drennan, Mann, Maroney, Swope, Sypolt, Weld, Facemire, Palumbo, Prezioso, Romano and Woelfel.

CONFIRMATIONS

Boley (Chair), Ferns (Vice Chair), Azinger, Blair, Boso, Gaunch, Palumbo, Plymale and Prezioso.

ECONOMIC DEVELOPMENT

Maroney (Chair), Maynard (Vice Chair), Arvon, Cline, Drennan, Mann, Smith, Swope, Takubo, Baldwin, Jeffries, Romano, Stollings and Woelfel.

EDUCATION

Mann (Chair), Karnes (Vice Chair), Azinger, Boley, Cline, Drennan, Rucker, Swope, Trump, Beach, Plymale, Romano, Stollings and Unger.

ENERGY, INDUSTRY AND MINING

Smith (Chair), Sypolt (Vice Chair), Blair, Boley, Cline, Drennan, Ferns, Mann, Swope, Facemire, Jeffries, Ojeda and Woelfel.
SENATE COMMITTEES

ENROLLED BILLS

Maynard (Chair), Azinger, Gaunch, Palumbo and Prezioso.

FINANCE

Blair (Chair), Boso (Vice Chair), Arvon, Boley, Drennan, Ferns, Gaunch, Mann, Maroney, Sypolt, Takubo, Facemire, Palumbo, Plymale, Prezioso, Stollings and Unger.

GOVERNMENT ORGANIZATION

Gaunch (Chair), Maynard (Vice Chair), Boso, Clements, Maroney, Smith, Sypolt, Takubo, Weld, Baldwin, Facemire, Jeffries, Palumbo and Woelfel.

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

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

JUDICIARY

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

MILITARY

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

[XXXII]
SENATE COMMITTEES

NATURAL RESOURCES

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

PENSIONS

Karnes (Chair), Gaunch (Vice Chair), Arvon, Maroney, Weld, Plymale and Romano.

RULES

Carmichael (Chair), Blair, Boley, Ferns, Gaunch, Sypolt, Trump, Palumbo, Plymale, Prezioso and Stollings.

TAX REFORM

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

TRANSPORTATION AND INFRASTRUCTURE

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

WORKFORCE

Swope (Chair), Weld (Vice Chair), Arvon, Boso, Karnes, Rucker, Smith, Beach, Jeffries, Ojeda and Stollings.
AN ACT to amend and reenact §9-5-26 of the Code of West Virginia, 1931, as amended, relating to supplemental Medicare and Medicaid reimbursement; and clarifying that ground emergency medical transportation services providers owned or operated by, or providing services under contract with the state and certain political subdivisions thereof, are eligible for reimbursement from Medicare.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.


(a) A ground emergency medical transportation services provider, owned, operated by, or providing services under contract to, the state, or a city, a county, or city and county, that provides services to Medicare and 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 Medicare or Medicaid program, exceed 100 percent of actual costs, as determined pursuant to the Medicaid State Plan or the state’s Medicare plan, for ground emergency medical transportation services.

(3) The supplemental Medicare and Medicaid reimbursement shall be distributed exclusively to eligible providers under a payment methodology based on ground emergency medical transportation services provided to Medicare and 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 of Health and Human Resources 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 §9-5-26(g)(1) of this code, 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 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 §16-4C-1 et seq. of this code.

CHAPTER 118

(Com. Sub. for H. B. 3104 - By Delegates Howell and Iaquinta)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]
Brain and Spinal Cord Injury Rehabilitation Fund Board to the Department of Health and Human Resources; and transferring the powers and duties of the Division of Rehabilitation Services related to administering the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund to the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 10. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND.

§9-10-1. Definitions.

As used in this article, the term:

(1) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources or his or her designee.

(2) “Fund” means the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund.

(3) “Traumatic brain injury” means an acquired injury to the brain, including brain injuries caused by anoxia due to near drowning. “Traumatic brain injury” does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma.

(4) “Spinal cord injury” means a traumatic injury to the spinal cord that results in a permanent loss of sensation and voluntary movement below the level of the lesion.

§9-10-2. Fund continued under Department of Health and Human Resources.

(a) The special revenue account in the State Treasury known as the “West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund,” which was previously authorized by §18-10K-1 et seq. of this code, is continued.
(b) Effective July 1, 2018, all powers and duties of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board are transferred to the Secretary.

(c) Effective July 1, 2018, all powers and duties of the West Virginia Division of Rehabilitation Services related to administration of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund are transferred to the Secretary.

§9-10-3. Administration of Fund; administrative fees; Fund use.

(a) The West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund is subject to the annual appropriation of funds by the Legislature. The West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the Fund.

(b) All moneys collected, received and deposited into the State Treasury and credited to the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund shall be expended by the Secretary exclusively in accordance with the uses and criteria set forth in this article. Expenditures from this Fund for any other purposes are void.

(c) The Fund shall be administered by the Department of Health and Human Resources: Provided, That the Department may not charge a fee to administer the Fund.

(d) Nothing in this article may be construed to mandate funding for the Fund or to require any appropriation by the Legislature.

(e) Moneys in the Fund shall be used to pay for services that will increase opportunities for and enhance the achievement of functional independence, and a return to a
productive lifestyle for individuals who have suffered a traumatic brain injury or a spinal cord injury.

(f) Services that are eligible for payment by the Fund shall include, but not be limited to:

(1) Case management;

(2) Rehabilitative therapies and services;

(3) Attendant care;

(4) Home accessibility modifications;

(5) Equipment necessary for activities; and

(6) Family support services.

(g) Funds shall be expended according to the priorities and criteria for disbursement established by the secretary under section four of this article, and pursuant to legislative rules authorized in section five of this article.


(a) The Secretary shall establish priorities and criteria for the disbursement of moneys in the Fund by conducting at least one annual public meeting in each of the state’s three congressional districts in existence on January 1, 2018, to identify the needs of citizens with traumatic brain injuries and spinal cord injuries, and to identify the gaps in services to these citizens. Public meetings held pursuant to the requirements of this section shall be noticed and advertised as public meetings, and the Secretary shall accept public comments for not less than thirty days following each public meeting.

(b) On or before December 31 of each year the Secretary shall issue an annual report to the Governor and to the Legislative Oversight Commission on Health and Human Resources Accountability, with recommendations for meeting the identified needs within the existing programs,
proposing statutory changes to facilitate the delivery of services, improving coordination of services and summarizing its actions during the preceding year.

(c) Moneys expended for services described under section three of this article shall be as a payer of last resort and only for citizens of this state. An individual shall use comparable benefits and services that are available prior to the expenditure of moneys available to that individual through the Fund.

§9-10-5. Promulgation of legislative rules.

(a) The Secretary may propose legislative rules for promulgation, in accordance with the provisions of §29A-3-1 et seq. of this code, necessary for the transaction of its business or to carry out the purposes of this article. The rules shall include priorities and criteria for the disbursement of moneys in the Fund.

(b) The rules of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board previously promulgated pursuant to section three, §18-10K-1 et seq. of this code shall remain in force and effect until the promulgation of new or additional rules by the Secretary.

§9-10-6. Legislative Audit.

(a) On or before July 1, 2020, the Legislative Auditor shall conduct a post audit of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund and report its findings and recommendations to the Joint Standing Committee on Government Organization.

(b) The post audit required by this section shall include, but not be limited to, a review and comprehensive report upon the following subjects:

(1) The Department of Health and Human Resources’ compliance with statutes and legislative rules governing administration of the Fund.
(2) The adequacy of oversight controls for expenditures from the Fund.

(3) The extent to which the Department of Health and Human Resources administers the Fund to maximize the number of eligible individuals served.

(4) The effectiveness of the Department of Health and Human Resources’ efforts to provide community education and outreach to eligible individuals regarding the availability of assistance from the Fund.

(5) The extent, if any, to which the functions of the Fund unnecessarily duplicate the functions of other state programs.

CHAPTER 18. EDUCATION.

ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND ACT.

§18-10K-1. Transfer of fund to Department of Health and Human Resources.

(a) Effective July 1, 2018, the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board as created by the prior enactment of this article is abolished and its powers and duties are transferred to the West Virginia Department of Health and Human Resources in accordance with §9-10-1 et seq. of this code.

(b) The rules of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board shall remain in force and effect until the promulgation of new or additional rules by the Secretary of the Department of Health and Human Resources, pursuant to §9-10-5 of this code.

(c) On the effective date of this section, all records necessary to effectuate the purposes of §9-10-1 et seq. of this code shall be transferred to the Secretary of the Department of Health and Human Resources.
AN ACT to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §9-7-2, §9-7-5, and §9-7-6 of said code; to amend said code by adding thereto a new article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-10, §9-8-11, and §9-8-12; and to amend and reenact §61-3-54 of said code, all relating to investigations, inspections, evaluations, and review conducted by the Department of Health and Human Resources to prevent fraud and abuse; disenrolling providers who commit fraud and requiring repayment; authorizing secretary to develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud; requiring a report on the pilot project to the Legislature; defining fraud as it relates to Medicaid; creating criminal penalties against providers for failure to keep medical records for a specific time period; authorizing a civil cause of action for fraud when a person or entity knew or reasonably should have known a claim to be false; enlarging the statute of limitations to file health care fraud civil actions; defining terms relating to public assistance; requiring the Department of Health and Human Resources to implement work requirements for applicants of Supplemental Nutrition Assistance Program (SNAP); to limit recipients to 3 months of benefits in any 36-month period unless the recipient is working or participating in a work, educational, or volunteer program for at least 20 hours a week; providing further
exemptions to work requirements; requiring discontinuance of a federal waiver in certain counties; requiring a study of the impact of the SNAP work requirements in those counties where they were implemented; eliminating the federal waiver statewide within a certain time-period; requiring a report to the Legislature; establishing work requirements; authorizing a waiver to if necessary to implement a policy that complies with federal law; authorizing rulemaking; requiring a design or establishment of a computerized income, asset, and identity verification system for each public assistance program administered by the Department of Health and Human Resources; allowing for contracting with a third-party vendor; setting out required contract terms; requiring accessing information of various federal, state, and miscellaneous sources for eligibility verification; requiring identity authentication as a condition to receive public assistance; requiring the department to study the feasibility of requiring photos on EBT cards; specifying procedures for case review of public assistance benefits; setting forth notice requirements and right to a hearing; requiring referrals for fraud, misrepresentation, and inadequate documentation; authorizing referrals of suspected cases of fraud for criminal prosecution; requiring report to the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit transfer card; tracking out-of-state spending of SNAP and TANF benefits; providing for rulemaking; and providing a penalty for taking the identity of another person for the purpose of gaining employment.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

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


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

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

(2) Promulgate, amend, revise, and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and policies, but not inconsistent with state law: Provided, That rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of §16-2E-1, et seq. of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven of said article.

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

(4) Sign and execute in the name of the state by the State Department of Health and Human Resources any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships, or individuals: Provided, That the provisions of §5A-3-1 et seq. of this code are followed.
(5) Sign and execute a contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing, and independent professional consultant contracts for the Medicaid program: Provided, That the provisions of §5A-3-1 et seq. of this code are followed: Provided, however, That a contract awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains in full force and effect and the secretary retains sole authority to review, approve, and issue changes to contracts issued under the former purchasing process, and is responsible for challenges, disputes, protests, and legal actions related to such contracts.

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

(7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations, performing inspections, evaluations, and review, and providing quality control for
the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, inspection, evaluation, review or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of §29-6-1 et seq. of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.

(8) Provide at department expense a program of continuing professional, technical, and specialized instruction for the personnel of the department.

(9) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects, and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his or her household furniture, effects, and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in 12 months or for any movement other than from one place of employment in this state to another place of employment in this state.

(10) Establish a program to provide reimbursement to employees of the department whose items of personal
property, as defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: Provided, That such reimbursement is limited to a maximum amount of $250 per claim.

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

(12) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance and federal assistance and which are not inconsistent with state law.

(13) Organize within the department a Board of Review, consisting of a chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, such Board of Review to have such powers of a review nature and such additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

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

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

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

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

(18) Delegate to the personnel of the department all powers and duties vested in the secretary, except the power and authority to sign contracts and agreements.

(19) Make such reports in such form and containing such information as may be required by applicable federal laws and rules respecting federal-state assistance and federal assistance.

(20) Invoke any legal, equitable, or special remedies for the enforcement of the provisions of this chapter.

(21) Require a provider, subgrantee, or other entity performing services on behalf of the department to comply with all applicable laws, rules, and written procedures pertaining to the program for which the entity is providing or coordinating services, including, but not limited to, policy manuals, statements of work, program instructions, or other similar agreements. When submitting a claim for payment, the entity shall certify that it has complied with all material conditions for payment. Knowingly and intentionally submitting a claim or billing for services performed in material violation of any law, rule, policy, or other written agreement shall constitute fraud and the agreement for provision of services shall terminate. The entity shall be required to repay the department for any payment under the program for which the provider was not entitled, regardless of whether the incorrect payment was the result of department error, fraud, or other cause. A demand for repayment or termination of agreement for
provision of services shall be subject to the due process procedures pursuant to §29A-5-1 et seq. of this code. The provisions of this subsection do not apply to fraud in the Medicaid program.

(22) Develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud. The Secretary shall submit a report containing the pilot program’s results and recommendations to the Joint Committee on Government and Finance no later than December 31, 2020.

§9-7-2. Definitions.

For the purposes of this article:

“Assistance” means money payments, medical care, transportation and other goods and services necessary for the health or welfare of individuals, including guidance, counseling, and other welfare services and shall include all items of any nature contained within the definition of “welfare assistance” in §9-1-2 of this code.

“Benefits” means money payments, goods, services, or any other thing of value.

“Board and Care Facility” means a residential setting where two or more unrelated adults receive nursing services or personal care services.

“Claim” means an application for payment for goods or services provided under the medical programs of the Department of Health and Human Resources.

“Entity” means any corporation, association, partnership, limited liability company, or other legal entity.

“Financial Exploitation” means the intentional misappropriation or misuse of funds or assets of another.
“Fraud” means a knowing misrepresentation, knowing concealment, or reckless statement of a material fact.

“Medicaid” means that assistance provided under a state plan implemented pursuant to the provisions of subchapter nineteen, chapter seven, Title 42, United States Code, as that chapter has been and may hereafter be amended.

“Person” means any individual, corporation, association, partnership, proprietor, agent, assignee, or entity.

“Provider” means any individual or entity furnishing goods or services under the medical programs of the Department of Health and Human Resources.

“Unit” means the Medicaid Fraud Control Unit established under §9-7-1 of this code.

§9-7-5. Bribery; false claims; conspiracy; criminal penalties; failure to maintain records.

(a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from the medical services fund established pursuant to §9-4-2 of this code, which is not authorized by applicable laws or rules and regulations.

(b) A person shall not make or present or cause to be made or presented to the Department of Health and Human Resources a claim under the medical programs of the Department of Health and Human Resources knowing the claim to be false, fraudulent, or fictitious.

(c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the medical programs of the Department of Health and Human Resources.
(d) Any person found to be in violation of §9-7-5(a), §9-7-5(b) or §9-7-5(c) of this code is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than 10 years or shall be fined not to exceed $10,000, or both fined and imprisoned.

(e) Any provider who, having submitted a claim for or received a benefit, payment, or allowance under the medical programs of the Department of Health and Human Resources, knowingly fails to maintain such records as are necessary to disclose fully the nature of a good or service for which a claim was submitted or benefit, payment, or allowance was received, or such records as are necessary to disclose fully all income and expenditures upon which rate of payment were based, for a period of at least five years following the date on which payment was received, shall be guilty of a misdemeanor and, upon conviction, may be imprisoned in a state correctional facility not to exceed one year or may be fined up to $1,000, or both fined and imprisoned. Any person who knowingly destroys such records within five years from the date the benefit, payment, or allowance was received, shall be guilty of a felony, and may be imprisoned in a state correctional facility not less than one nor more than 10 years or may be fined not to exceed $10,000, or both fined and imprisoned.

§9-7-6. Civil remedies; statute of limitations.

(a) Any person, firm, corporation, or other entity which makes or attempts to make, or causes to be made, a claim for benefits, payments, or allowances under the medical programs of the Department of Health and Human Resources, when such person, firm, corporation, or entity knows, or reasonably should have known, such claim to be false, fictitious, or fraudulent, or fails to maintain such records as are necessary shall be liable to the Department of Health and Human Resources in an amount equal to three times the amount of such benefits, payments, or allowances to which he or she or it is not entitled, and shall be liable for
the payment of reasonable attorney fees and all other fees
and costs of litigation.

(b) No criminal action or indictment need be brought
against any person, firm, corporation or other entity as a
condition for establishing civil liability hereunder.

(c) A civil action under this section may be prosecuted
and maintained on behalf of the Department of Health and
Human Resources by the Attorney General and the Attorney
General’s assistants or a prosecuting attorney and the
prosecuting attorney’s assistants or by any attorney in
contract with or employed by the Department of Health and
Human Resources to provide such representation.

(d) Any civil action brought under this section shall be
brought within five years from the time the false, fraudulent,
or fictitious claim was made. Claims will be judged based
on the Medicaid or program rules in existence at the time of
the claim submission.

ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.

§9-8-1. Definitions.

As used in this article:

“Able bodied adult” means a person between the ages
of 18 and 49 years of age without dependents and who does
not meet any of the exemptions set forth in §9-8-2(a) of this
code.

“Applicant” or “recipient” means a person who is
applying for, or currently receiving, public assistance in the
State of West Virginia from the department.

“Department” means the West Virginia Department of
Health and Human Resources.
“Electronic benefit transfer” or “EBT” means any electronic system which allows the department to issue and track benefits via a magnetically encoded payment card.

“Good cause” means circumstances beyond the household’s control, including, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, natural disaster, a declared state of emergency due to inclement weather, or the unavailability of transportation.

“Public assistance” means government benefits provided to qualifying individuals on the basis of need to provide basic necessities to individuals and their families. These shall include, but are not limited to, the following:

(A) Supplemental Nutrition Assistance Program, or SNAP;

(B) Medicaid; and

(C) Temporary Assistance to Needy Families, or TANF.

“Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.

“Work” or “working” means:

(A) Work in exchange for money;

(B) Work in exchange for goods or services (“in kind” work);

(C) Unpaid work, verified under standards established by the department in rule; or

(D) Any combination thereof.

§9-8-2. Work requirements.

(a) All able bodied adults may receive Supplemental Nutrition Assistance benefits for only three months in each
36-month period. Recipients are exempt from the time limit if they are employed or are participating and complying with the requirements of a work, education, or volunteer program for at least 20 hours per week: Provided, That further exemptions may apply and shall be determined in accordance with federal law: Provided, however, That any such exemptions shall not exceed those granted by federal law.

(b) Beginning October 1, 2018, the department shall discontinue and shall not seek federal waivers granted pursuant to 7 U.S.C. § 2015(o) for Able Bodied Adults Without Dependents (ABAWD) for any county that cannot be demonstrated to have, through data in conformance with U.S. Bureau of Labor Statistics methodology set forth under federal law, a recent 12-month average unemployment rate above 10 percent; a recent 24-month average unemployment rate 20 percent above the national average for the same 24-month period; qualification for extended unemployment benefits; or designation as a “labor surplus area” by the U.S. Department of Labor. These waivers exempt able bodied adults with no children from work requirements for receipt of SNAP benefits. Notwithstanding any provision in this code to the contrary, all counties shall be ineligible for any such waiver effective October 1, 2022.

(c) The department shall submit a report to the Legislative Oversight Committee on Health and Human Resources Accountability, no later than October 1, 2020, on the employment impact of ABAWD requirements in those counties where they were implemented as of October 1, 2018. The report shall include, on a county-by-county basis, information on the number of SNAP recipients subject to work requirements; the number exempted from work requirements and the reasons for exemption; the number of applicants denied benefits due to non-compliance with work requirements; the dollar amount of benefits withheld due to non-compliance; the estimated fiscal impact on SNAP retailers of withholding those benefits; the number of recipients who engaged in work, education, or volunteerism
in order to maintain benefits; the efforts made to assist recipients with meeting work requirements in order to maintain benefits; and any such recommendations pertaining to work requirements as the department deems advisable.

(d) If a recipient resides in a county subject to the provisions of this article, an applicant shall be deemed as complying with the requirements of a work, education, or volunteer program if any of the following requirements are satisfied:

(1) Working at least 20 hours per week, averaged monthly, or 80 hours a month;

(2) Participating in, and complying with, the requirements of a work force training program of 20 hours per week, as determined by the department in rule;

(3) Volunteering 20 hours a week, as determined by the department in rule;

(4) Any combination of working, volunteering and/or participating in a work program for a total of 20 hours per week, as determined by the department in legislative rule; or

(5) Participating in, and complying with, a workfare program as set out in 7 C.F.R. 273.24(a)(3).

(e) As determined by the department, if a recipient would have worked an average of 20 hours per week but missed some work for good cause, the recipient shall be considered to have met the work requirement if the absence from work is temporary and the recipient retains his or her job. Good cause includes circumstances beyond the household’s control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, natural disaster, a declared state of emergency due to inclement weather, or the unavailability of transportation.
(f) If the department determines that a waiver, or an amendment to a waiver, is necessary to implement a policy that complies with 7 C.F.R. 273.24, it shall request the waiver or the amendment to the waiver from the United States Department of Agriculture.

(g) The department shall propose legislative rules in accordance with the provisions of this code for a plan for implementation of the requirements set forth in this section in counties that are subject to the requirements set forth in §9-8-2 (d) of this code.

§9-8-3. Income and identity verification.

(a) By December 31, 2018, the department shall redesign an existing system or establish a new computerized income, asset, and identity eligibility verification system or contract with a third-party vendor to verify eligibility, eliminate the duplication of assistance, and deter waste, fraud, and abuse in each public assistance program which it administers.

(b) The department may contract with a third-party vendor to develop a system to provide a service or verify income, assets, and identity eligibility of applicants to prevent fraud, misrepresentation, and inadequate documentation when determining eligibility for public assistance. This system or service shall be accessed prior to determining eligibility, periodically between eligibility redeterminations, and during eligibility redeterminations and reviews. The department may contract with a vendor to provide information to facilitate reviews of recipient eligibility conducted by the department.

(c) A contract made pursuant to this section may not include a provision that provides the vendor with a monetary incentive for reducing the number of recipients.

(d) Nothing in this article precludes the department from continuing to conduct additional eligibility verification processes currently in practice.
§9-8-4. Eligibility verification.

All applications for benefits must be processed through a system as set forth in this article. Complete applications, including the interview, shall be processed within 10 days of receipt or the maximum period required by federal law. Prior to determining eligibility, the department shall access information for every applicant from federal, state, and other sources: Provided, That such access does not violate any federal law.

§9-8-5. Identity authentication.

(a) Prior to awarding public assistance, applicants for benefits must complete a computerized identity authentication process to confirm the identity of the applicant. This shall be done with a knowledge-based questionnaire consisting of financial and/or personal questions. The questionnaire must contain questions tailored to assist persons without a bank account or those who have poor access to financial and banking services or who do not have an established credit history. The questionnaire may be submitted online, in-person, or via telephone.

(b) The department shall submit a report to the Legislative Oversight Committee on Health and Human Resources Accountability regarding the feasibility of implementing the photo EBT card option under 7 U.S.C. § 2016(h)(9). The study shall address certain operational issues to ensure that state implementation would be consistent with all federal requirements, and that program access is protected for participating households, including, but not limited to, allowing the recipient to designate permitted users for purposes of utilizing the photo EBT card.

§9-8-6. Case review.

(a) If the information obtained from the review provided in this article does not result in the department finding a
discrepancy or change in an applicant’s or recipient’s circumstances affecting eligibility, the department shall not take any further action and shall continue processing the application.

(b) If the review results in a discrepancy, the department shall promptly redetermine eligibility.

§9-8-7. Notice and right to be heard.

(a) An applicant shall be given written notice and the opportunity to explain any issues with the application or redetermination as set forth in §9-8-6 of this code. Self-declarations by applicants or recipients shall be accepted as verification of categorical and financial eligibility if no other verification source is available. In cases requiring expedited services an applicant’s statement may be temporarily accepted until such time as verification is possible.

(b) The notice given to the applicant or recipient is required to describe the circumstances of the issue, the manner in which the applicant or recipient may respond, and the consequences of failing to take action. If the applicant does not respond timely as required by federal law, the department shall take appropriate action. The department may request additional information as it finds necessary to reach a decision.

(c) An individual may respond in writing, electronically, or verbally. If an individual responds verbally, staff shall note the time and contents of the response in the individual’s file. The response by the individual may:

(1) Disagree with the findings of the department. The department shall reinvestigate the matter if the applicant or recipient disagrees. If the department finds that there has been an error, the department shall take immediate action to correct it. If the department determines that there is no error, the department shall determine the effect of the response on
the applicant’s or recipient’s case and take appropriate action. Written notice of the department’s action shall be given to the applicant or recipient; or

(2) Agree with the findings of the department. The department shall determine the effect on the applicant’s or recipient’s case and take appropriate action. Written notice of the department’s action shall be given to the applicant or recipient.

(d) If the applicant fails to respond to the notice, the department shall deny or discontinue assistance for failure to verify information. Eligibility for assistance may not be established or reestablished until the issue has been resolved.

§9-8-8. Referrals for fraud, misrepresentation or inadequate documentation.

(a) After the case review as set forth in §9-8-6 of this code, the department shall refer cases of suspected fraud to the Office of Inspector General within the department. That office shall take appropriate action, including civil penalties or referral to an appropriate prosecuting attorney for criminal prosecution.

(b) In cases of substantiated fraud, upon conviction, the state shall review all appropriate legal options. These may include, but are not limited to, removal from other public assistance programs and garnishment of wages or state income tax refunds until the department recovers an equal amount of benefits fraudulently claimed.

(c) The department may refer suspected cases of fraud, misrepresentation, or inadequate documentation to appropriate agencies, divisions, or departments for review of eligibility issues in other public assistance programs. This should also include cases in which an individual is determined to be no longer eligible for the original program.
§9-8-9. Reporting to the Governor and Legislature.

The department shall prepare an annual report by January 15 each year to the Governor and Legislative Oversight Commission on Health and Human Resources Accountability. The report shall contain information on the effectiveness and general findings of the eligibility verification system, including the number of cases reviewed, the number of case closures, the number of referrals for criminal prosecution, recovery of improper payment, collection of civil penalties, the outcomes of cases referred to the Office of Inspector General, and any savings that have resulted from the system.

§9-8-10. Prohibitions on use of electronic benefit transfer cards.

(a) To ensure that public assistance program funds are used for their intended purposes, funds available on electronic benefit transfer cards may not be used to purchase alcohol, liquor or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos, travel services provided by a travel agent, money transmission to locations abroad, sexually oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets for other entertainment events intended for the general public.

(b) Electronic benefit transfer card transactions are prohibited at all casinos, gaming establishments, tattoo parlors, massage parlors, body piercing parlors, spas, nail salons, lingerie shops, vapor cigarette stores, psychic or fortune-telling businesses, bail bond companies, video arcades, movie theaters, swimming pools, cruise ships, theme parks, dog or horse racing facilities, pari-mutuel facilities, sexually oriented businesses, retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, and businesses or retail establishments where minors under age 18 are not permitted.
(c) Upon enrollment, the department shall provide all applicants with an itemized list of prohibited purchases, including those specified in this section, and make such list available on the department’s website.

(d) If a recipient is found to have violated the provisions of this section, the department shall issue a warning in writing to the recipient. The recipient is subject to disqualification of benefits for up to three months following the first offense, for up to one year following the second offense, and a permanent termination of benefits following the third offense, unless expressly prohibited by federal law.


(a) The department shall post on its website and provide to the Joint Committee on Government and Finance a report of Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families benefit spending on or before January 15 of each year.

(b) The report required by this section shall include:

(1) The dollar amount and number of transactions of Supplemental Nutrition Assistance Program benefits that are accessed or spent out-of-state, by state;

(2) The dollar amount and number of transactions of Temporary Assistance for Needy Families benefits that are accessed or spent out-of-state, by state;

(3) The dollar amount, number of transactions and times of transactions of Supplemental Nutrition Assistance Program benefits that are accessed or spent in-state, by retailer, institution or location; and

(4) The dollar amount, number of transactions and times of Temporary Assistance for Needy Families transactions of benefits that are accessed or spent in-state, disaggregated by retailer, institution, or location.

(c) The report required pursuant to this section shall not identify individual recipients.
§9-8-12. Rulemaking.

The secretary may promulgate rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code which he or she finds necessary to effectuate the provisions of this article.

CHAPTER 61. CRIMES AND PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-54. Taking identity of another person; penalty.

Any person who knowingly takes the name, birth date, social security number, or other identifying information of another person, without the consent of that other person, with the intent to fraudulently represent that he or she is the other person for the purpose of making financial or credit transactions in the other person’s name, or for the purpose of gaining employment, is guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary not more than five years, or fined not more than $1,000, or both: Provided, That the provisions of this section do not apply to any person who obtains another person’s drivers license or other form of identification for the sole purpose of misrepresenting his or her age.

CHAPTER 120

(Com. Sub. for H. B. 4024 - By Delegates Summers, Ellington, Householder, Sobonya, Atkinson, Dean, Hollen, Butler and Espinosa)

[Passed March 7, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

AN ACT to repeal §9-5-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-5-9 of said code, all
relating generally to direct cremation or direct burial expenses for indigent persons; decreasing the maximum amount paid by the Department of Health and Human Resources for indigent burial or cremation; making certain relatives of the indigent person liable for direct cremation or direct burial expenses; authorizing the Department of Health and Human Resources to recover direct cremation or direct burial expenses from relatives liable for those costs; requiring affidavits be signed and filed; requiring direct cremation in certain circumstances; defining terms; and establishing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-9. Direct cremation or direct burial expenses for indigent persons.

(a) For the purposes of this section:

“Direct burial” means the removal of the remains from the place of death; casket for the deceased and transportation to a West Virginia cemetery.

“Direct cremation” includes the removal of the remains from the place of death; container; and crematory fees.

“Spouse” means the person to whom the decedent was legally married and who survived the decedent: Provided, That a petition for divorce had not been filed by either the decedent or the spouse prior to the decedent’s death.

(b) The Department of Health and Human Resources shall pay for direct cremation or direct burial for indigent persons in an amount not to exceed the actual cost of the direct cremation or direct burial service provided, or $1000 whichever is less.

(c) Prior to paying for direct cremation or direct burial, the department shall determine the financial assets of a
deceased person and whether or not the deceased’s estate or any of his or her relatives who are liable for the direct cremation or direct burial expenses pursuant to subsection (d) of this section is financially able to pay, alone or in conjunction, for the direct cremation or direct burial expenses. The Department of Health and Human Resources shall require that an affidavit be filed with the department, in a form provided by and determined in accordance with the income guidelines as set forth by the department, as well as any other supporting financial information the department may require, including, but not limited to, bank statements and income tax information of the deceased person and the relatives of the deceased person who are liable for the direct cremation or direct burial expenses pursuant to section nine of this article. The affidavit must be:

(1) Signed by the heir or heirs-at-law and state that the estate of the deceased person is unable to pay the costs associated with direct cremation or direct burial and that the sole or combined assets of the heir or heirs-at-law are not sufficient to pay for the direct cremation or direct burial of the deceased person; or

(2) Signed by the county coroner or the county health officer, the attending physician or other person signing the death certificate or the state medical examiner stating that the deceased person has no heirs or that heirs have not been located after a reasonable search and that the deceased person had no estate or the estate is pecuniarily unable to pay the costs associated with direct cremation or direct burial.

(d) The relatives of an indigent person, who are of sufficient ability, shall be liable to pay the direct cremation or direct burial expenses in the following order:

(1) The spouse.

(2) The children.
(3) The parents.

(4) The brothers and sisters.

(e) The Department of Health and Human Resources may proceed by motion in the circuit court of the county in which the indigent person may be, against one or more of the relatives liable.

(f) If a relative so liable does not reside in this state and has no estate or debts due him or her within the state by means of which the liability can be enforced against him or her, the other relatives shall be liable as provided by this section.

(g) The liability of the relative of an indigent person for funeral service expenses is limited to the amount paid by the Department of Health and Human Resources.

(h) Payment for direct burials or direct cremations for indigents shall be made by the Department of Health and Human Resources to the West Virginia funeral director licensed pursuant to §30-6-9 of this code or a crematory operator certificated pursuant to §30-6-11 of this code that provided the direct burial or direct cremation, as the department may determine, pursuant to appropriations for expenditures made by the Legislature. Nothing in this section shall prohibit a family from holding a memorial service for the indigent person: Provided, That payment under this section is limited to direct burial and direct cremation and may not include payment for a memorial service.

(i) In the event that no family members can be found, or refuse to participate, an application for payment of direct cremation or direct burial for indigent persons may be submitted to the Department of Health and Human Resources by the provider of such services.

(j) A direct cremation may not be made of the decedent if objectionable pursuant to decedent’s religion or otherwise
prohibited by federal law, state law or regulation, in which case, alternate funeral service expenses shall be substituted. In the absence of a religious objection or prohibition by federal law, state law or regulation, an indigent for which payment under this section is authorized shall be cremated.

(k) A person who knowingly swears falsely in an affidavit required by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than six months, or both fined and confined.


1 [Repealed.]
(1) “Adult protective services agency” means any public or nonprofit private agency, corporation, board or organization furnishing protective services to adults;

(2) “Abuse” means the infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident;

(3) “Neglect” means the unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult;

(4) “Incapacitated adult” means any person who by reason of physical, mental or other infirmity is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health;

(5) “Emergency” or “emergency situation” means a situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to an incapacitated adult;

(6) “Financial exploitation” means the intentional misappropriation or misuse of funds or assets of an incapacitated adult or facility resident, but does not apply to a transaction or disposition of funds or assets where a person made a good faith effort to assist the incapacitated adult or facility resident with the management of his or her money or other things of value;

(7) “Legal representative” means a person lawfully invested with the power and charged with the duty of taking care of another person or with managing the property and rights of another person, including, but not limited to, a guardian, conservator, medical power of attorney representative, trustee or other duly appointed person;

(8) “Nursing home” or “facility” means any institution, residence, intermediate care facility for individuals with an intellectual disability, care home or any other adult residential facility, or any part or unit thereof, that is subject
to the provisions of §16-5C-1 et seq., §16-5D-1 et seq. §16-
5E-1 et seq., or §16-5H-1 et seq. §16-5C-1 et seq. of this
code;

(9) “Regional long-term care ombudsman” means any
paid staff of a designated regional long-term care
ombudsman program who has obtained appropriate
certification from the Bureau for Senior Services and meets
the qualifications set forth in §16-5I-7 of this code;

(10) “Facility resident” means an individual living in a
nursing home or other facility, as that term is defined in
subdivision (7) of this section;

(11) “Responsible family member” means a member of
a resident’s family who has undertaken primary
responsibility for the care of the resident and who has
established a working relationship with the nursing home or
other facility in which the resident resides. For purposes of
this article, a responsible family member may include
someone other than the resident’s legal representative;

(12) “State Long-term Care Ombudsman” means an
individual who meets the qualifications of §16-5I-5 of this
code and who is employed by the State Bureau for Senior
Services to implement the State Long-term Care
Ombudsman Program;

(13) “Secretary” means the Secretary of the Department
of Health and Human Resources.

(14) “Caregiver” means a person or entity who cares for
or shares in the responsibility for the care of an incapacitated
adult on a full-time or temporary basis, regardless of
whether such person or entity has been designated as a
guardian or custodian of the incapacitated adult by any
contract, agreement or legal procedures. Caregiver includes
health care providers, family members, and any person who
otherwise voluntarily accepts a supervisory role towards an
incapacitated adult.
§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

(a) There is continued within the Department of Health and Human Resources the system of adult protective services heretofore existing.

(b) The secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code regarding the organization and duties of the adult protective services system and the procedures to be used by the department to effectuate the purposes of this article. The rules may be amended and supplemented from time to time.

(c) The secretary shall design and arrange such rules to attain, or move toward the attainment, of the following goals to the extent that the secretary believes feasible under the provisions of this article within the state appropriations and other funds available:

(1) Assisting adults who are abused, neglected, financially exploited or incapacitated in achieving or maintaining self-sufficiency and self-support and preventing, reducing and eliminating their dependency on the state;

(2) Preventing, reducing and eliminating neglect, financial exploitation and abuse of adults who are unable to protect their own interests;

(3) Preventing and reducing institutional care of adults by providing less intensive forms of care, preferably in the home;

(4) Referring and admitting abused, neglected, financially exploited or incapacitated adults to institutional care only where other available services are inappropriate;
(5) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings;

(6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility residents through the joint efforts of the various agencies of the Department of Health and Human Resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities and county prosecutors;

(7) Preventing, reducing and eliminating abuse, neglect, and financial exploitation of residents in nursing homes or facilities; and

(8) Coordinating investigation activities for complaints of financial exploitation, abuse and neglect of incapacitated adults and facility residents among the various agencies of the Department of Health and Human Resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as appropriate.

(d) No adult protective services caseworker may be held personally liable for any professional decision or action thereupon arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon: Provided, That nothing in this subsection protects any adult protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.

(e) The rules proposed by the secretary shall provide for the means by which the department shall cooperate with federal, state and other agencies to fulfill the objectives of the system of adult protective services.
AN ACT to amend and reenact §9-2-13 of the Code of West Virginia, 1931, as amended, relating to judicial review of contested cases under the West Virginia Department of Health and Human Resources Board of Review; correcting an error by changing “not” to “or”; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

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


(a) For purposes of this section:

(1) “Agency” means the Board of Review or the Bureau for Medical Services, as the case may be, that has been named as a party to any proceeding on appeal made pursuant to the provisions of this section.

(2) “Board of Review” or “Board” means the West Virginia Department of Health and Human Resources Board of Review operating pursuant to the provisions of §9-2-6 (13) of this code.
(3) “Bureau” means the Department of Health and Human Resources’ Bureau for Medical Services which is the single state agency for Medicaid services in West Virginia.

(b) The board shall provide a fair, impartial and expeditious grievance and appeal process to applicants or recipients of state assistance, federal assistance, federal-state assistance or welfare assistance, as defined in §9-1-1 et seq. of this code. The bureau shall provide a fair, impartial and expeditious grievance and appeal process to providers of Medicaid services.

(c) Any party adversely affected or aggrieved by a final decision or order of the agency may seek judicial review of that decision.

(d) Proceedings for review shall be instituted by filing a petition, at the election of the petitioner, in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within thirty days after the date upon which such party received notice of the final order or decision of the agency. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond is required to effect any such appeal.

(e) The filing of the petition for appeal does not stay or supersede enforcement of the final decision or order of the agency. The agency may voluntarily stay such enforcement and the appellant, at any time after the filing of the petition for appeal, may apply to the circuit court of Kanawha County, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, for a stay of or to supersede the final decision or order. Pending the appeal, the circuit court may grant a stay
or supersede the order upon such terms as it considers proper.

(f) Within 15 days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall prepare and transmit to the circuit court of Kanawha County, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, the original or a certified copy of the entire record of the proceeding under review: *Provided,* that all records prepared and transmitted that involve a minor shall be filed under seal. This shall include a transcript of all reported testimony and all exhibits, papers, motions, documents, evidence, records, agency staff memoranda and data used in consideration of the case, all briefs, memoranda, papers, and records considered by the agency in the underlying proceeding and a statement of matters officially noted. By stipulation of the parties, the record may be shortened. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed and the court shall order the agency to file the record.

(g) The cost of preparing the official record shall be assessed as part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be assessed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at cost to the requesting party, a copy of the official record.

(h) The court shall hear appeals upon assignments of error filed in the petition or set out in the briefs filed by the parties. The court may disregard errors not argued by brief or may consider errors that are not assigned or argued. The court shall fix a date and time for the hearing on the petition. Unless otherwise agreed by the parties, the court may not schedule the hearing sooner than 10 days after the filing of
the petition for appeal. The petitioner shall provide notice of the date and time of the hearing to the agency.

(i) In cases involving alleged irregularities in procedure before the agency that are not shown in the record, the court may take additional testimony. Otherwise, the circuit court shall review the appeal without a jury and may only consider the official record provided pursuant to the requirements of this section. The court may hear oral arguments and require written briefs.

(j) The court may affirm the final decision or order of the agency or remand the matter for further proceedings. The court may reverse, vacate or modify the final decision or order of the agency only if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedures;
(4) Affected by other error of law;
(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

(k) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals.

(l) The process established by this section is the exclusive remedy for judicial review of final decisions of the Board of Review and the Bureau for Medical Services.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-51-9, relating to pharmacy benefit managers; providing that a pharmacy, pharmacist, or pharmacy technician may inform consumers of lower cost alternatives and cost share to assist health care consumers in making informed decisions; prohibiting pharmacy benefit managers from penalizing a pharmacy, pharmacist, or pharmacy technician for discussing certain information with consumers; prohibiting pharmacy benefit managers from collecting cost shares exceeding the total submitted charges by a pharmacy, pharmacist, or pharmacy technician; setting forth limitations on pharmacy benefit managers when charging certain adjudicated claim fees to a pharmacy, pharmacist, or pharmacy technician; and excluding an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D from this code section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 51. PHARMACY AUDIT INTEGRITY AND TRANSPARENCY ACT.


1 (a) A pharmacy, a pharmacist, and a pharmacy technician shall have the right to provide a covered
individual with information related to lower cost alternatives and cost share for such covered individual to assist health care consumers in making informed decisions. Neither a pharmacy, a pharmacist, nor a pharmacy technician shall be penalized by a pharmacy benefit manager for discussing information in this section or for selling a lower cost alternative to a covered individual, if one is available, without using a health insurance policy.

(b) A pharmacy benefit manager shall not collect from a pharmacy, a pharmacist, or a pharmacy technician a cost share charged to a covered individual that exceeds the total submitted charges by the pharmacy or pharmacist to the pharmacy benefit manager.

(c) A pharmacy benefit manager may only directly or indirectly charge or hold a pharmacy, a pharmacist, or a pharmacy technician responsible for a fee related to the adjudication of a claim if:

(1) The total amount of the fee is identified, reported, and specifically explained for each line item on the remittance advice of the adjudicated claim; or

(2) The total amount of the fee is apparent at the point of sale and not adjusted between the point of sale and the issuance of the remittance advice.

(d) This section shall not apply with respect to claims under an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-38; to amend said code by adding thereto a new section, designated §33-15-4p; to amend said code by adding thereto a new section, designated §33-16-3zz; and to amend said code by adding thereto a new section, designated §33-25A-8p, all relating to requiring health insurance providers to provide coverage for long-term antibiotic therapy for a patient with Lyme disease.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-38. Lyme disease to be covered by all health insurance policies.

1 All individual and group health insurance policies providing coverage on an expense-incurred basis and 2 individual and group service or indemnity type contracts issued by a nonprofit corporation shall provide coverage for 3 long-term antibiotic therapy for a patient with Lyme disease when determined to be medically necessary and ordered by 4 a licensed physician after making a thorough evaluation of 5 the patient’s symptoms, diagnostic test results, or response 6 to treatment.
ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4p. Lyme disease to be covered by all health insurance policies.

Any insurer who, on or after January 1, 2019, delivers or issues a policy of accident and sickness insurance in this state under the provisions of this article shall make available as benefits to all subscribers and members coverage on an expense-incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation shall provide coverage for long-term antibiotic therapy for a patient with Lyme disease when determined to be medically necessary and ordered by a licensed physician after making a thorough evaluation of the patient’s symptoms, diagnostic test results, or response to treatment.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3zz. Lyme disease to be covered by all health insurance policies.

Any insurer who, on or after January 1, 2019, delivers or issues a policy of group accident and sickness insurance in this state under the provisions of this article shall make available as benefits to all subscribers and members coverage on an expense-incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation shall provide coverage for long-term antibiotic therapy for a patient with Lyme disease when determined to be medically necessary and ordered by a licensed physician after making a thorough evaluation of the patient’s symptoms, diagnostic test results, or response to treatment.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8p. Lyme disease to be covered by all health insurance policies.

A health maintenance organization issuing coverage in this state pursuant to the provisions of this article shall make
available as benefits to all subscribers and members
coverage on an expense-incurred basis and individual and
group service or indemnity type contracts issued by a
nonprofit corporation shall provide coverage for long-term
antibiotic therapy for a patient with Lyme disease when
determined to be medically necessary and ordered by a
licensed physician after making a thorough evaluation of the
patient’s symptoms, diagnostic test results, or response to
treatment.

CHAPTER 125

(S. B. 299 - By Senators Boley, Boso, Drennan,
Facemire, Ferns, Gaunch, Maroney, Palumbo,
Plymale, Prezioso, Stollings and Blair)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code
of West Virginia, 1931, as amended; to amend said code by
adding thereto a new section, designated §33-15-4q; to amend
said code by adding thereto a new section, designated §33-16-
3bb; to amend said code by adding thereto a new section,
designated §33-24-7q; to amend said code by adding thereto
a new section, designated §33-25-8n; and to amend said code
by adding thereto a new section, designated §33-25A-8q, all
relating to mandatory insurance coverage, up to the age of 20,
for certain medical foods for amino acid-based formulas;
providing a list of diagnosed conditions for which insurance
coverage should extend; providing that coverage extends to
medically necessary foods for home use when prescribed by a
physician; defining terms; and providing for exclusions from
such coverage.

Be it enacted by the Legislature of West Virginia:
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

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

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

(1) Coverages and benefits for x-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists, when performed for
cancer screening or diagnostic services on a woman age 18 or over;

(2) Annual checkups for prostate cancer in men age 50 and over;

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

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed healthcare facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child. No plan may deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or prior to 96 hours following a caesarean section delivery if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in §5-16-7(a)(4) of this code if inpatient care is determined to be medically necessary by the attending physician. These plans may include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care, or schooling. For purposes of this section, “serious mental illness” means an illness included in the American Psychiatric Association’s diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or
subclassifications of: (i) Schizophrenia and other psychotic
disorders; (ii) bipolar disorders; (iii) depressive disorders;
(iv) substance-related disorders with the exception of
caféine-related disorders and nicotìne-related disorders; (v)
anxiety disorders; and (vi) anorexia and bulimia. With
regard to a covered individual who has not yet attained the
age of 19 years, “serious mental illness” also includes
attention deficit hyperactivity disorder, separation anxiety
disorder, and conduct disorder.

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

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

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

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

(B) A child who is 12 years of age or younger with documented phobias or with documented mental illness and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8) (A) Any plan issued or renewed on or after January 1, 2012, shall include coverage for diagnosis, evaluation, and treatment of autism spectrum disorder in individuals ages 18 months to 18 years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such plan shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to, applied behavior analysis which shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis required by
this subdivision shall be in an amount not to exceed $30,000 per individual for three consecutive years from the date treatment commences. At the conclusion of the third year, coverage for applied behavior analysis required by this subdivision shall be in an amount not to exceed $2,000 per month, until the individual reaches 18 years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This subdivision does not limit, replace or affect any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U. S. C. §1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

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

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

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

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

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

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

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

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

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

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

(F) To the extent that the application of this subdivision for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year, the agency may apply additional cost containment measures.
(G) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

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

(10) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this section, shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(i) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis syndrome;

(iii) Eosinophilic disorders as evidenced by the results of a biopsy; and
(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by §5-16-7(a)(10)(A) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: Provided, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

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

(c) The finance board may cause to be separately rated for claims experience purposes:

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

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

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

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

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

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance, and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

(a) The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage, and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein
provided shall include coverages and benefits for x-ray and laboratory services in connection with mammogram and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age 50 and over. Such benefits shall include, but not be limited to, the following:

22. (1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force;

25. (2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age 18 and over;

31. (3) A test for the human papilloma virus (HPV) for women age 18 or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists for women age 18 and over;

37. (4) A checkup for prostate cancer annually for men age 50 or over; and

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

44. (6) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed healthcare individuals in conjunction with dental care if the covered person is:
(A) Seven years of age or younger or is developmentally
disabled and is either an individual for whom a successful
result cannot be expected from dental care provided under
local anesthesia because of a physical, intellectual, or other
medically compromising condition of the individual and for
whom a superior result can be expected from dental care
provided under general anesthesia; or

(B) A child who is 12 years of age or younger with
documented phobias, or with documented mental illness,
and with dental needs of such magnitude that treatment
should not be delayed or deferred and for whom lack of
treatment can be expected to result in infection, loss of teeth
or other increased oral or dental morbidity and for whom a
successful result cannot be expected from dental care
provided under local anesthesia because of such condition
and for whom a superior result can be expected from dental
care provided under general anesthesia.

(7) (A) A policy, plan, or contract that is issued or
renewed on or after January 1, 2019, and that is subject to
this section, shall provide coverage, through the age of 20,
for amino acid-based formula for the treatment of severe
protein-allergic conditions or impaired absorption of
nutrients caused by disorders affecting the absorptive
surface, function, length, and motility of the gastrointestinal
tract. This includes the following conditions, if diagnosed
as related to the disorder by a physician licensed to practice
in this state pursuant to either §30-3-1 et seq. or §30-14-1 et
seq. of this code:

(i) Immunoglobulin E and Nonimmunoglobulin E-
mediated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis
syndrome;

(iii) Eosinophilic disorders as evidenced by the results
of a biopsy; and
(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by §15-16-9(b)(7)(A) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: Provided, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(c) The group life and accidental death insurance herein provided shall be in the amount of $10,000 for every employee. The amount of the group life and accidental death insurance to which an employee would otherwise be entitled shall be reduced to $5,000 upon such employee attaining age 65.

(d) All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

(e) The provisions of §5A-3-1 et seq. of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer
plans for the insurance coverage desired: *Provided*, That the director shall negotiate and contract directly with healthcare providers and other entities, organizations and vendors in order to secure competitive premiums, prices, and other financial advantages. The director shall deal directly with insurers or healthcare providers and other entities, organizations, and vendors in presenting specifications and receiving quotations for bid purposes. No commission or finder’s fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies’ contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies: *Provided, however,* That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company, or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field, and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.
(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(g) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(i) The director shall provide by contract or contracts entered into under the provisions of this article the cost for coverage of children’s immunization services from birth through age 16 years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and whooping cough. Additional immunizations may be required by the Commissioner of the Bureau for Public Health for public health purposes. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the healthcare provider, and all costs of vaccine administration be exempt from any deductible, per visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other healthcare services provided at the time of immunization be exempt from any deductible and/or copayment provisions.
CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4q. Coverage for amino acid-based formulas.

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by §33-15-4p(a) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: Provided, That these foods are specifically
designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3bb. Coverage for amino acid-based formulas.

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-mediated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by §33-16-3bb(a) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.
For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: Provided, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7q. Coverage for amino acid-based formulas.

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by §33-24-7q(a) of this code shall include medical foods for home use for which a
physician has issued a prescription and has declared them to
be medically necessary, regardless of methodology of
delivery.

(c) For purposes of this section, “medically necessary
foods” or “medical foods” shall mean prescription amino
acid-based elemental formulas obtained through a
pharmacy: Provided, That these foods are specifically
designated and manufactured for the treatment of severe
allergic conditions or short bowel.

(d) The provisions of this section shall not apply to
persons with an intolerance for lactose or soy.

ARTICLE 25. HEALTHCARE CORPORATION.

§33-25-8n. Coverage for amino acid-based formulas.

(a) A policy, plan, or contract that is issued or renewed
on or after January 1, 2019, and that is subject to this article
shall provide coverage, through the age of 20, for amino
acid-based formula for the treatment of severe protein-
allergic conditions or impaired absorption of nutrients
due to disorders affecting the absorptive surface,
function, length, and motility of the gastrointestinal tract.
This includes the following conditions, if diagnosed as
related to the disorder by a physician licensed to practice in
this state pursuant to either §30-3-1 et seq. or §30-14-1 et
seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-
mediated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of
a biopsy; and

(4) Impaired absorption of nutrients caused by disorders
affecting the absorptive surface, function, length, and
motility of the gastrointestinal tract (short bowel).
(b) The coverage required by §33-25-8n(a) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: Provided, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8q. Coverage for amino acid-based formulas.

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and
(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by §33-25A-8p(a) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: Provided, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

CHAPTER 126

(Com. Sub. for S. B. 401 - By Senators Weld, Ferns, Romano, Baldwin and Drennan)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4r; to amend said code by adding thereto a new section, designated §33-16-3cc; to amend said code by adding thereto a new section, designated §33-24-7r; to amend said code by adding thereto a new section, designated §33-25-8o; and to amend said code by adding thereto a new section, designated §33-25A-8r, all relating to requiring specified coverage in health
benefit plans for outpatient and inpatient treatment for substance use disorders by July 1, 2019; defining terms; providing for rulemaking for the Insurance Commissioner; setting forth time frames for coverage; and providing for expedited grievances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4r. Substance use disorder.

(a) As used in this section, the following words have the following meanings:

(1) “Concurrent review” means inpatient care is reviewed as it is provided. Medically qualified reviewers monitor appropriateness of the care, the setting, and patient progress, and, as appropriate, the discharge plans.

(2) “Covered person” means an individual, other than a Medicaid recipient, for whom coverage has been provided pursuant to the provisions of this article.

(3) “Insurance Commissioner” means the person appointed pursuant to the provisions of §33-2-1 et seq. of this code.

(4) “Insurer” means the same as that term is defined in §33-15-2 of this code.

(5) “Physician” or “psychiatrist” means a person licensed pursuant to the provisions of either §30-3-1 et seq. or §30-14-1 et seq. of this code.

(6) “Psychologist” means a person licensed pursuant to the provisions of §30-21-1 et seq. of this code.

(7) “Substance use disorder” means the same as that term is defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and shall include substance use withdrawal.
(b) An accident and sickness policy that provides hospital or medical expense benefits and is delivered, issued, executed, or renewed in this state, or approved for issuance or renewal by the Insurance Commissioner, on or after January 1, 2019, shall provide benefits for inpatient and outpatient treatment of substance use disorder at in-network facilities at the same level as other medical services offered by the accident and sickness policy.

(c) The services for the treatment of substance use disorder shall be:

(1) Prescribed by a physician or psychiatrist licensed pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code or recommended by a psychologist licensed pursuant to the provisions of §30-21-1 et seq. of this code; and

(2) Provided by licensed health care professionals or licensed or certified substance use disorder providers in licensed or otherwise state-approved facilities, as required by this code.

(d) The inpatient and outpatient treatment of substance use disorders shall be provided when determined medically necessary by the covered person’s physician, psychologist, or psychiatrist. The facility shall notify the insurer of both the admission and the initial treatment plan within 48 hours of the admission or initiation of treatment. If there is no in-network facility immediately available for a covered person, an accident and sickness policy shall provide necessary exceptions to its network to ensure admission in a treatment facility within 72 hours. If a covered person is being treated at an out-of-network facility and an in-network facility becomes available during the course of the treatment plan, an insurer may transfer the covered person to the in-network facility.

(e) Providers of treatment for substance use disorders to persons covered under a covered contract shall not require
prepayment of medical expenses during this 180 days in excess of applicable copayment, deductible, or coinsurance as provided in the contract.

(f) The benefits for outpatient visits may be subject to concurrent or retrospective review of medical necessity or any other utilization management review.

(g)(1) If an insurer determines that continued inpatient care in a facility is no longer medically necessary, the insurer shall, within 72 hours, provide written notice to the covered person and the covered person’s physician of its decision and the right to file for an expedited review of an adverse decision.

(2) The insurer shall review and make a determination with respect to the internal appeal within 72 hours and communicate that determination to the covered person and the covered person’s physician.

(3) If the determination is to uphold the denial, the covered person and the covered person’s physician have the right to file an expedited external appeal with an independent review organization. An independent utilization review organization shall make a determination within 72 hours.

(4) If the insurer’s determination is upheld and it is determined continued inpatient care is not medically necessary, the insurer remains responsible to provide benefits for the inpatient care through the day following the date the determination is made and the covered person is only responsible for any applicable copayment, deductible, and coinsurance for the stay through that date as applicable under the contract.

(5) The covered person shall not be discharged or released from the inpatient facility until all internal appeals and independent utilization review organization appeals are exhausted. For any costs incurred after the day following the
date of determination until the day of discharge, the covered person is only responsible for any applicable cost-sharing, and any additional charges shall be paid by the facility or provider.

(h) The Insurance Commissioner shall propose rules in accordance with the provisions of §29A-3-1 et seq. of this code to develop a procedure for an expedited review of an adverse decision as set forth in this section. The Legislature finds that for the purposes of §20A-3-15 of this code, an emergency exists requiring the promulgation of an emergency rule to respond to the growing need in our state for substance abuse treatment.

(i)(1) The benefits for the first five days of intensive outpatient or partial hospitalization services shall be provided without any retrospective review of medical necessity, and medical necessity shall be determined by the covered person’s physician.

(2) The benefits beginning day six and every six days thereafter of intensive outpatient or partial hospitalization services is subject to a concurrent review of the medical necessity of the services.

(j) Medical necessity review shall use an evidence-based and peer-reviewed clinical review tool. This tool shall be developed by the Insurance Commissioner. Rules shall ensure that the tool is based on appropriate evidence-based criteria that has been peer reviewed. The Insurance Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to develop the tool.

(k) The benefits for outpatient prescription drugs to treat substance use disorder shall be provided when determined medically necessary by the covered person’s physician or psychiatrist without the imposition of any prior authorization or other prospective utilization management requirements.
The days per plan year of benefits shall be computed based on inpatient days. One or more unused inpatient days may be exchanged for two outpatient visits. All extended outpatient services such as partial hospitalization and intensive outpatient, shall be considered inpatient days for the purpose of the visit-to-day exchange provided in this subsection.

Except as provided in this section, the benefits and cost-sharing shall be provided to the same extent as for any other medical condition covered under the contract.

The benefits required by this section are to be provided to all covered persons with a diagnosis of substance use disorder. The presence of additional related or unrelated diagnoses shall not be a basis to reduce or deny the benefits required by this section.

The provisions of this section apply to all insurance contracts in which the insurer has reserved the right to change the premium.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3cc. Substance use disorder.

As used in this section, the following words have the following meanings:

1 “Concurrent review” means inpatient care is reviewed as it is provided. Medically qualified reviewers monitor appropriateness of the care, the setting, and patient progress, and, as appropriate, the discharge plans.

2 “Covered person” means an individual, other than a Medicaid recipient, for whom coverage has been provided pursuant to the provisions of this article.

3 “Health insurer” means the same as that term is defined in §33-16-1a of this code.
(4) “Insurance Commissioner” means the person appointed pursuant to the provisions of §33-2-1 et seq. of this code.

(5) “Physician” or “psychiatrist” means a person licensed pursuant to the provisions of either §30-3-1 et seq. or §30-14-1 et seq. of this code.

(6) “Psychologist” means a person licensed pursuant to the provisions of §30-21-1 et seq. of this code.

(7) “Substance use disorder” means the same as that term is defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and shall include substance use withdrawal.

(b) A group accident and sickness policy that provides hospital or medical expense benefits and is delivered, issued, executed, or renewed in this state, or approved for issuance or renewal by the Insurance Commissioner, on or after January 1, 2019, shall provide benefits for inpatient and outpatient treatment of substance use disorder at in-network facilities at the same level as other medical services offered by the group accident and sickness policy.

(c) The services for the treatment of substance use disorder shall be:

(1) Prescribed by a physician or psychiatrist licensed pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code or recommended by a psychologist licensed pursuant to the provisions of §30-21-1 et seq. of this code; and

(2) Provided by licensed health care professionals or licensed or certified substance use disorder providers in licensed or otherwise state-approved facilities, as required by this code.

(d) The inpatient and outpatient treatment of substance use disorders shall be provided when determined medically
necessary by the covered person’s physician, psychologist, or psychiatrist. The facility shall notify the health insurer of both the admission and the initial treatment plan within 48 hours of the admission or initiation of treatment. If there is no in-network facility immediately available for a covered person, a group accident and sickness policy shall provide necessary exceptions to its network to ensure admission in a treatment facility within 72 hours. If a covered person is being treated at an out-of-network facility and an in-network facility becomes available during the course of the treatment plan, an insurer may transfer the covered person to the in-network facility.

(e) Providers of treatment for substance use disorders to persons covered under a covered contract shall not require prepayment of medical expenses during this 180 days in excess of applicable copayment, deductible, or coinsurance as provided in the contract.

(f) The benefits for outpatient visits may be subject to concurrent or retrospective review of medical necessity or any other utilization management review.

(g)(1) If a health insurer determines that continued inpatient care in a facility is no longer medically necessary, the health insurer shall within 72 hours provide written notice to the covered person and the covered person’s physician of its decision and the right to file for an expedited review of an adverse decision.

(2) The health insurer shall review and make a determination with respect to the internal appeal within 72 hours and communicate the determination to the covered person and the covered person’s physician.

(3) If the determination is to uphold the denial, the covered person and the covered person’s physician have the right to file an expedited external appeal with an independent review organization. An independent
utilization review organization shall make a determination within 72 hours.

(4) If the health insurer’s determination is upheld and it is determined continued inpatient care is not medically necessary, the health insurer remains responsible to provide benefits for the inpatient care through the day following the date the determination is made and the covered person is only responsible for any applicable copayment, deductible, and coinsurance for the stay through that date as applicable under the contract.

(5) The covered person shall not be discharged or released from the inpatient facility until all internal appeals and independent utilization review organization appeals are exhausted. For any costs incurred after the day following the date of determination until the day of discharge, the covered person is only responsible for any applicable cost-sharing, and any additional charges shall be paid by the facility or provider.

(h) The Insurance Commissioner shall propose rules in accordance with the provisions of §29A-3-1 et seq. of this code to develop a procedure for an expedited review of an adverse decision as set forth in this section. The Legislature finds that for the purposes of §29A-3-15 of this code, an emergency exists requiring the promulgation of an emergency rule to respond to the growing need in our state for substance abuse treatment.

(i)(1) The benefits for the first five days of intensive outpatient or partial hospitalization services shall be provided without any retrospective review of medical necessity, and medical necessity shall be determined by the covered person’s physician.

(2) The benefits beginning day six and every six days thereafter of intensive outpatient or partial hospitalization services are subject to a concurrent review of the medical necessity of the services.
(j) Medical necessity review shall use an evidence-based and peer-reviewed clinical review tool. This tool shall be developed by the Insurance Commissioner. The Insurance Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to develop the tool.

(k) The benefits for outpatient prescription drugs to treat substance use disorder shall be provided when determined medically necessary by the covered person’s physician or psychiatrist without the imposition of any prior authorization or other prospective utilization management requirements.

(l) The days per plan year of benefits shall be computed based on inpatient days. One or more unused inpatient days may be exchanged for two outpatient visits. All extended outpatient services such as partial hospitalization and intensive outpatient, shall be considered inpatient days for the purpose of the visit-to-day exchange provided in this subsection.

(m) Except as provided in this section, the benefits and cost-sharing shall be provided to the same extent as for any other medical condition covered under the contract.

(n) The benefits required by this section are to be provided to all covered persons with a diagnosis of substance use disorder. The presence of additional related or unrelated diagnoses shall not be a basis to reduce or deny the benefits required by this section.

(o) The provisions of this section apply to all insurance contracts in which the health insurer has reserved the right to change the premium.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.
§33-24-7r. Substance use disorder.

(a) As used in this section, the following words have the following meanings:

(1) “Concurrent review” means inpatient care is reviewed as it is provided. Medically qualified reviewers monitor appropriateness of the care, the setting, and patient progress, and, as appropriate, the discharge plans.

(2) “Covered person” means an individual, other than a Medicaid recipient, for whom coverage has been provided pursuant to the provisions of this article.

(3) “Insurance Commissioner” means the person appointed pursuant to the provisions of §33-2-1 of this code.

(4) “Health benefit plan” means the same as that term is defined in §33-24-7p of this code.

(5) “Health plan issuer” means the same as that term is defined in §33-24-7p of this code.

(6) “Physician” or “psychiatrist” means a person licensed pursuant to the provisions of either §30-3-1 et seq. or §30-14-1 et seq. of this code.

(7) “Psychologist” means a person licensed pursuant to the provisions of §30-21-1 et seq. of this code.

(8) “Substance use disorder” means the same as that term is defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and shall include substance use withdrawal.

(b) A health benefit plan offered by a health plan issuer that provides hospital or medical expense benefits and is delivered, issued, executed, or renewed in this state, or approved for issuance or renewal by the Insurance Commissioner, on or after January 1, 2019, shall provide benefits for inpatient and outpatient treatment of substance
use disorder at in-network facilities at the same level as other medical services offered by the health benefit plan.

(c) The services for the treatment of substance use disorder shall be:

(1) Prescribed by a physician or psychiatrist licensed pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code or recommended by a psychologist licensed pursuant to the provisions of §30-21-1 et seq. of this code; and

(2) Provided by licensed health care professionals or licensed or certified substance use disorder providers in licensed or otherwise state-approved facilities, as required by this code.

(d) The inpatient and outpatient treatment of substance use disorders shall be provided when determined medically necessary by the covered person’s physician, psychologist, or psychiatrist. The facility shall notify the insurer of both the admission and the initial treatment plan within 48 hours of the admission or initiation of treatment. If there is no in-network facility immediately available for a covered person, a health benefit plan offered by a health plan issuer shall provide necessary exceptions to its network to ensure admission in a treatment facility within 72 hours. A health benefit plan may transfer a covered person to an in-network facility if one becomes available during the course of the treatment plan. If a covered person is being treated at an out-of-network facility and an in-network facility becomes available during the course of the treatment plan, an insurer may transfer the covered person to the in-network facility.

(e) Providers of treatment for substance use disorders to persons covered under a covered contract shall not require prepayment of medical expenses during this 180 days in excess of applicable copayment, deductible, or coinsurance as provided in the contract.
(f) The benefits for outpatient visits may be subject to concurrent or retrospective review of medical necessity or any other utilization management review.

(g)(1) If an insurer determines that continued inpatient care in a facility is no longer medically necessary, the insurer shall within 72 hours provide written notice to the covered person and the covered person’s physician of its decision and the right to file for an expedited review of an adverse decision.

(2) The insurer shall review and make a determination with respect to the internal appeal within 72 hours and communicate the determination to the covered person and the covered person’s physician.

(3) If the determination is to uphold the denial, the covered person and the covered person’s physician have the right to file an expedited external appeal with an independent review organization. An independent utilization review organization shall make a determination within 72 hours.

(4) If the insurer’s determination is upheld and it is determined continued inpatient care is not medically necessary, the insurer remains responsible to provide benefits for the inpatient care through the day following the date the determination is made and the covered person is only responsible for any applicable copayment, deductible, and coinsurance for the stay through that date as applicable under the contract.

(5) The covered person shall not be discharged or released from the inpatient facility until all internal appeals and independent utilization review organization appeals are exhausted. For any costs incurred after the day following the date of determination until the day of discharge, the covered person is only responsible for any applicable cost-sharing, and any additional charges shall be paid by the facility or provider.
(h) The Insurance Commissioner shall propose rules in accordance with the provisions of §29A-3-1 et seq. of this code to develop a procedure for an expedited review of an adverse decision as set forth in this section. The Legislature finds that for the purposes of §29A-3-15 of this code, an emergency exists requiring the promulgation of an emergency rule to respond to the growing need in our state for substance abuse treatment.

(i)(1) The benefits for the first five days of intensive outpatient or partial hospitalization services shall be provided without any retrospective review of medical necessity, and medical necessity shall be determined by the covered person’s physician.

(2) The benefits beginning day six and every six days thereafter of intensive outpatient or partial hospitalization services are subject to a concurrent review of the medical necessity of the services.

(j) Medical necessity review shall use an evidence-based and peer-reviewed clinical review tool. This tool shall be developed by the Insurance Commissioner. The Insurance Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to develop the tool.

(k) The benefits for outpatient prescription drugs to treat substance use disorder shall be provided when determined medically necessary by the covered person’s physician or psychiatrist without the imposition of any prior authorization or other prospective utilization management requirements.

(l) The days per plan year of benefits shall be computed based on inpatient days. One or more unused inpatient days may be exchanged for two outpatient visits. All extended outpatient services such as partial hospitalization and intensive outpatient, shall be considered inpatient days for
the purpose of the visit-to-day exchange provided in this subsection.

(m) Except as provided in this section, the benefits and cost-sharing shall be provided to the same extent as for any other medical condition covered under the contract.

(n) The benefits required by this section are to be provided to all covered persons with a diagnosis of substance use disorder. The presence of additional related or unrelated diagnoses shall not be a basis to reduce or deny the benefits required by this section.

(o) The provisions of this section apply to all insurance contracts in which the insurer has reserved the right to change the premium.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8o. Substance use disorder.

(a) As used in this section, the following words have the following meanings:

(1) “Concurrent review” means inpatient care is reviewed as it is provided. Medically qualified reviewers monitor appropriateness of the care, the setting, and patient progress, and, as appropriate, the discharge plans.

(2) “Covered person” means an individual, other than a Medicaid recipient, for whom coverage has been provided pursuant to the provisions of this article.

(3) “Insurance Commissioner” means the person appointed pursuant to the provisions of §33-2-1 of this code.

(4) “Health benefit plan” means the same as that term is defined in §33-25-8m of this code.

(5) “Health plan issuer” means the same as that term is defined in §33-25-8m of this code.
(6) “Physician” or “psychiatrist” means a person licensed pursuant to the provisions of either §30-3-1 et seq. or §30-3-14 et seq. of this code.

(7) “Psychologist” means a person licensed pursuant to the provisions of §30-21-1 et seq. of this code.

(8) “Substance use disorder” means the same as that term is defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and shall include substance use withdrawal.

(b) A health benefit plan offered by a health plan issuer that provides hospital or medical expense benefits and is delivered, issued, executed, or renewed in this state, or approved for issuance or renewal by the Insurance Commissioner, on or after January 1, 2019, shall provide benefits for inpatient and outpatient treatment of substance use disorder at in-network facilities at the same level as other medical services offered by the health benefit plan offered by a health plan issuer.

(c) The services for the treatment of substance use disorder shall be:

(1) Prescribed by a physician or psychiatrist licensed pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code or recommended by a psychologist licensed pursuant to the provisions of §30-21-1 et seq. of this code; and

(2) Provided by licensed health care professionals or licensed or certified substance use disorder providers in licensed or otherwise state-approved facilities, as required by this code.

(d) The inpatient and outpatient treatment of substance use disorders shall be provided when determined medically necessary by the covered person’s physician, psychologist, or psychiatrist. The facility shall notify the insurer of both the admission and the initial treatment plan within 48 hours.
of the admission or initiation of treatment. If there is no in-network facility immediately available for a covered person, a health benefit plan offered by a health plan issuer shall provide necessary exceptions to its network to ensure admission in a treatment facility within 72 hours. If a covered person is being treated at an out-of-network facility and an in-network facility becomes available during the course of the treatment plan, an insurer may transfer the covered person to the in-network facility.

(e) Providers of treatment for substance use disorders to persons covered under a covered contract shall not require prepayment of medical expenses during this 180 days in excess of applicable copayment, deductible, or coinsurance as provided in the contract.

(f) The benefits for outpatient visits may be subject to concurrent or retrospective review of medical necessity or any other utilization management review.

(g)(1) If an insurer determines that continued inpatient care in a facility is no longer medically necessary, the insurer shall, within 72 hours, provide written notice to the covered person and the covered person’s physician of its decision and the right to file for an expedited review of an adverse decision.

(2) The insurer shall review and make a determination with respect to the internal appeal within 72 hours and communicate that determination to the covered person and the covered person’s physician.

(3) If the determination is to uphold the denial, the covered person and the covered person’s physician have the right to file an expedited external appeal with an independent review organization. An independent utilization review organization shall make a determination within 72 hours.
(4) If the insurer’s determination is upheld and it is determined continued inpatient care is not medically necessary, the insurer remains responsible to provide benefits for the inpatient care through the day following the date the determination is made and the covered person is only responsible for any applicable copayment, deductible, and coinsurance for the stay through that date as applicable under the contract.

(5) The covered person shall not be discharged or released from the inpatient facility until all internal appeals and independent utilization review organization appeals are exhausted. For any costs incurred after the day following the date of determination until the day of discharge, the covered person is only responsible for any applicable cost-sharing, and any additional charges shall be paid by the facility or provider.

(h) The Insurance Commissioner shall propose rules in accordance with the provisions of §29A-3-1 et seq. of this code to develop a procedure for an expedited review of an adverse decision as set forth in this section. The Legislature finds that for the purposes of §29A-3-15 of this code, an emergency exists requiring the promulgation of an emergency rule to respond to the growing need in our state for substance abuse treatment.

(i)(1) The benefits for the first five days of intensive outpatient or partial hospitalization services shall be provided without any retrospective review of medical necessity, and medical necessity shall be determined by the covered person’s physician.

(2) The benefits beginning day six and every six days thereafter of intensive outpatient or partial hospitalization services is subject to a concurrent review of the medical necessity of the services.

(j) Medical necessity review shall use an evidence-based and peer-reviewed clinical review tool. This tool
shall be developed by the Insurance Commissioner. The Insurance Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to develop the tool.

(k) The benefits for outpatient prescription drugs to treat substance use disorder shall be provided when determined medically necessary by the covered person’s physician or psychiatrist without the imposition of any prior authorization or other prospective utilization management requirements.

(l) The days per plan year of benefits shall be computed based on inpatient days. One or more unused inpatient days may be exchanged for two outpatient visits. All extended outpatient services such as partial hospitalization and intensive outpatient, shall be considered inpatient days for the purpose of the visit-to-day exchange provided in this subsection.

(m) Except as provided in this section, the benefits and cost-sharing shall be provided to the same extent as for any other medical condition covered under the contract.

(n) The benefits required by this section are to be provided to all covered persons with a diagnosis of substance use disorder. The presence of additional related or unrelated diagnoses shall not be a basis to reduce or deny the benefits required by this section.

(o) The provisions of this section apply to all insurance contracts in which the insurer has reserved the right to change the premium.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8r. Substance use disorder.

(a) As used in this section, the following words have the following meanings:
(1) “Concurrent review” means inpatient care is reviewed as it is provided. Medically qualified reviewers monitor appropriateness of the care, the setting, and patient progress, and, as appropriate, the discharge plans.

(2) “Covered person” means an individual, other than a Medicaid recipient, for whom coverage has been provided pursuant to the provisions of this article.

(3) “Insurance Commissioner” means the person appointed pursuant to the provisions of §33-2-1 of this code.

(4) “Health benefit plan” means the same as that term is defined in §33-24-7p of this code.

(5) “Health plan issuer” means the same as that term is defined in §33-24-7p of this code.

(6) “Physician” or “psychiatrist” means a person licensed pursuant to the provisions of either §30-3-1 et seq. or §30-14-1 et seq. of this code.

(7) “Psychologist” means a person licensed pursuant to the provisions of §30-21-1 et seq. of this code.

(8) “Substance use disorder” means the same as that term is defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and shall include substance use withdrawal.

(b) A health benefit plan offered by a health plan issuer that provides hospital or medical expense benefits and is delivered, issued, executed, or renewed in this state, or approved for issuance or renewal by the Insurance Commissioner, on or after January 1, 2019, shall provide benefits for inpatient and outpatient treatment of substance use disorder at in-network facilities at the same level as other medical benefits offered by the health benefit plan offered by a health plan insurer.
(c) The services for the treatment of substance use disorder shall be:

(1) Prescribed by a physician or psychiatrist licensed pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code or recommended by a psychologist licensed pursuant to the provisions of §30-21-1 et seq. of this code; and

(2) Provided by licensed health care professionals or licensed or certified substance use disorder providers in licensed or otherwise state-approved facilities, as required by this code.

(d) The inpatient and outpatient treatment of substance use disorders shall be provided when determined medically necessary by the covered person’s physician, psychologist, or psychiatrist. The facility shall notify the insurer of both the admission and the initial treatment plan within 48 hours of the admission or initiation of treatment. If there is no in-network facility immediately available for a covered person, a health benefit plan offered by a health plan issuer shall provide necessary exceptions to its network to ensure admission in a treatment facility within 72 hours. If a covered person is being treated at an out-of-network facility and an in-network facility becomes available during the course of the treatment plan, an insurer may transfer the covered person to the in-network facility.

(e) Providers of treatment for substance use disorders to persons covered under a covered contract shall not require prepayment of medical expenses during this 180 days in excess of applicable copayment, deductible, or coinsurance as provided in the contract.

(f) The benefits for outpatient visits may be subject to concurrent or retrospective review of medical necessity or any other utilization management review.
(g)(1) If an insurer determines that continued inpatient care in a facility is no longer medically necessary, the insurer shall, within 72 hours, provide written notice to the covered person and the covered person’s physician of its decision and the right to file for an expedited review of an adverse decision.

(2) The insurer shall review and make a determination with respect to the internal appeal within 72 hours and communicate that determination to the covered person and the covered person’s physician.

(3) If the determination is to uphold the denial, the covered person and the covered person’s physician have the right to file an expedited external appeal with an independent review organization. An independent utilization review organization shall make a determination within 72 hours.

(4) If the insurer’s determination is upheld and it is determined continued inpatient care is not medically necessary, the insurer remains responsible to provide benefits for the inpatient care through the day following the date the determination is made and the covered person shall only be responsible for any applicable copayment, deductible, and coinsurance for the stay through that date as applicable under the contract.

(5) The covered person shall not be discharged or released from the inpatient facility until all internal appeals and independent utilization review organization appeals are exhausted. For any costs incurred after the day following the date of determination until the day of discharge, the covered person is only responsible for any applicable cost-sharing, and any additional charges shall be paid by the facility or provider.

(h) The Insurance Commissioner shall propose rules in accordance with the provisions of §29A-3-1 et seq. of this code to develop a procedure for an expedited review of an
adverse decision as set forth in this section. The Legislature
finds that for the purposes of §29A-3-15 of this code, an
emergency exists requiring the promulgation of an
emergency rule to respond to the growing need in our state
for substance abuse treatment.

(i)(1) The benefits for the first five days of intensive
outpatient or partial hospitalization services shall be
provided without any retrospective review of medical
necessity, and medical necessity shall be determined by the
covered person’s physician.

(2) The benefits beginning day six and every six days
thereafter of intensive outpatient or partial hospitalization
services is subject to a concurrent review of the medical
necessity of the services.

(j) Medical necessity review shall use an evidence-
based and peer-reviewed clinical review tool. This tool
shall be developed by the Insurance Commissioner. The
Insurance Commissioner shall propose rules for legislative
approval in accordance with the provisions of §29A-3-1 et seq. of this code to develop the tool.

(k) The benefits for outpatient prescription drugs to treat
substance use disorder shall be provided when determined
medically necessary by the covered person’s physician or
psychiatrist without the imposition of any prior
authorization or other prospective utilization management
requirements.

(l) The days per plan year of benefits shall be computed
based on inpatient days. One or more unused inpatient days
may be exchanged for two outpatient visits. All extended
outpatient services such as partial hospitalization and
intensive outpatient, shall be considered inpatient days for
the purpose of the visit-to-day exchange provided in this
subsection.
(m) Except as provided in this section, the benefits and cost-sharing shall be provided to the same extent as for any other medical condition covered under the contract.

(n) The benefits required by this section are to be provided to all covered persons with a diagnosis of substance use disorder. The presence of additional related or unrelated diagnoses shall not be a basis to reduce or deny the benefits required by this section.

(o) The provisions of this section apply to all insurance contracts in which the insurer has reserved the right to change the premium.

CHAPTER 127

(Com. Sub. for S. B. 493 - By Senator Azinger)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

§33-26B-1. Short title.

§33-26B-2. Purpose.


§33-26B-4. Construction.

§33-26B-5. Definitions.

§33-26B-6. Creation of association.

§33-26B-7. Board of directors.


§33-26B-10. Plan of operation.

1 [Repealed.]

§33-26B-12. Records.

1 [Repealed.]


1 [Repealed.]


1 [Repealed.]


1 [Repealed.]

§33-26B-16. Prohibited advertisements.

1 [Repealed.]

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

§33-26A-2. Purpose of article and association of insurers.

1 (a) The purpose of this article is to protect, subject to certain limitations, the persons specified in §33-26A-3(a) of this code against failure in the performance of contractual obligations, under life, health, and annuity policies, plans, or contracts specified in §33-26A-3(b) of this code, because of the impairment or insolvency of the member insurer that issued the policies, plans, or contracts.

8 (b) To provide this protection, an association of member insurers is created to pay benefits and to continue coverages as limited by this article, and members of the association are subject to assessment to provide funds to carry out the purpose of this article.
§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.

(a) This article shall provide coverage for the policies and contracts specified in §33-26A-3(b) of this code:

(1) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees, or payees, including health care providers rendering services covered under health insurance policies or certificates, of the persons covered under §33-26A-3(a)(2) of this code.

(2) To persons who are owners of or certificate holders or enrollees under the policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

(A) Are residents of this state; or

(B) Are not residents of this state, but only under all of the following conditions:

(i) The member insurer that issued the policies or contracts is domiciled in this state;

(ii) The states in which the persons reside have associations similar to the association created by this article; and

(iii) The persons are not eligible for coverage by an association in any other state because the insurer or the health maintenance organization was not licensed in the state at the time specified in the state’s guaranty association law.

(3) For unallocated annuity contracts specified in §33-26A-3(b) of this code, §33-26A-3(a)(1) and §33-26A-3(a)(2) of this code shall not apply, and this article shall, except as provided in §33-26A-3(a)(5) and §33-26A-3(a)(6) of this code, provide coverage to:
31 (A) Persons who are the owners of the unallocated
32 annuity contracts if the contracts are issued to or in
33 connection with a specific benefit plan whose plan sponsor
34 has its principal place of business in this state; and
35
36 (B) Persons who are owners of unallocated annuity
37 contracts issued to or in connection with government
38 lotteries if the owners are residents.
39
40 (4) For structured settlement annuities specified in §33-
41 26A-3(b) of this code, §33-26A-3(a)(1) and §33-26A-
42 3(a)(2) of this code shall not apply, and this article shall, 
43 except as provided in §33-26A-3(a)(5) and §33-26A-3(a)(6) 
44 of this code, provide coverage to a person who is a payee
45 under a structured settlement annuity, or beneficiary of a 
46 payee if the payee is deceased, if the payee:
47
48 (A) Is a resident, regardless of where the contract owner
49 resides; or
50
51 (B) Is not a resident, but only under both of the 
52 following conditions:
53
54 (i) (I) The contract owner of the structured settlement 
55 annuity is a resident; or
56
57 (II) The contract owner of the structured settlement 
58 annuity is not a resident, but the insurer that issued the
59 structured settlement annuity is domiciled in this state and
60 the state in which the contract owner resides has an
61 association similar to the association created by this article;
62 and
63
64 (ii) Neither the payee or beneficiary nor the contract
65 owner is eligible for coverage by the association of the state
66 in which the payee or contract owner resides.
67
68 (5) This article shall not provide coverage to:
(A) A person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state; or

(B) A person covered under §33-26A-3(a)(3) of this code, if any coverage is provided by the association of another state to the person; or

(C) A person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. § 5891, regardless of whether the transaction occurred before or after 26 U.S.C. § 5891 became effective.

(6) This article is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this article is provided coverage under the laws of any other state, the person shall not be provided coverage under this article. In determining the application of the provisions of this subdivision in situations where a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this article shall be construed in conjunction with other state laws to result in coverage by only one association.

(b) Coverage provided by this article shall be as follows:

(1) This article shall provide coverage to the persons specified in §33-26A-3(a) of this code for policies or contracts of direct, nongroup life insurance, health insurance (which for the purposes of this article includes health maintenance organization subscriber contracts and certificates), or annuities, and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment
contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued in connection with government lotteries, and any immediate or deferred annuity contracts.

(2) Except as otherwise provided in §33-26A-3(b)(3) of this code, this article shall not provide coverage for:

(A) A portion of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the policy or contract owner;

(B) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(C) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this article, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody’s Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this article, whichever is earlier; and

(ii) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this article, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody’s Corporate Bond Yield Average as most recently available;
(D) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured including, but not limited to, benefits payable by an employer, association, or other person under:


(ii) A minimum premium group insurance plan;

(iii) A stop-loss group insurance plan; or

(iv) An administrative services only contract;

(E) A portion of a policy or contract to the extent that it provides for:

(i) Dividends or experience rating credits;

(ii) Voting rights; or

(iii) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(F) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(G) An unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;
(H) A portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;

(I) A portion of a policy or contract to the extent that the assessments required by §33-26A-9 of this code with respect to the policy or contract are preempted by federal or state law;

(J) An obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, certificate holder, contract owner, or policy owner, including without limitation:

(i) Claims based on marketing materials;

(ii) Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form filing or approval requirements;

(iii) Misrepresentations of or regarding policy or contract benefits;

(iv) Extra-contractual claims; or

(v) A claim for penalties or consequential or incidental damages;

(K) A contractual agreement that establishes the member insurer’s obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

(L) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been
credited to the policy or contract, or as to which the policy or contract owner’s rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this article, whichever is earlier. If a policy’s or contract’s interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(M) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C & D), or Subchapter XIX, Chapter 7 of Title 42 of the United States Code (commonly known as Medicaid), or any regulations issued pursuant thereto; or

(N) Structured settlement annuity benefits to which a payee (or beneficiary) has transferred his or her rights in a structured settlement factoring transaction as defined in 26 U.S.C. § 5891, regardless of whether the transaction occurred before or after that section became effective.

(3) The exclusion from coverage referenced in §33-26A-3(b)(2)(C) of this code shall not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits.

(c) The benefits that the association may become liable for shall in no event exceed the lesser of:

(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or
(2) (A) With respect to one life, regardless of the number of policies or contracts:

(i) $300,000 in life insurance death benefits, but no more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) For health insurance benefits:

(I) $100,000 for coverages not defined as disability income insurance or health benefit plans or long-term care insurance as defined in §33-15A-4 of this code, including any net cash surrender and net cash withdrawal values;

(II) $300,000 for disability income insurance, and $300,000 for long-term care insurance as defined in §33-15A-4 of this code;

(III) $500,000 for health benefit plans;

(iii) $250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(B) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, $250,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(C) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, $250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(D) However, in no event shall the association be obligated to cover more than:
(i) An aggregate of $300,000 in benefits with respect to any one life under §33-26A-3(c)(2)(A), §33-26A-3(c)(2)(B), or §33-26A-3(c)(2)(C) of this code except with respect to benefits for health benefit plans under §33-26A-3(c)(2)(A)(ii) of this code, in which case the aggregate liability of the association shall not exceed $500,000 with respect to any one individual; or

(ii) With respect to one owner of multiple nongroup policies of life insurance, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than $5 million in benefits, regardless of the number of policies and contracts held by the owner.

(E) With respect to either one contract owner provided coverage under §33-26A-3(a)(3)(B) of this code, or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in §33-26A-3(c)(2)(B) of this code, $5 million in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this article and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state. In no event shall the association be obligated to cover more than $5 million in benefits with respect to all of these unallocated contracts.

(F) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association’s obligations under this article may be met
by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(G) For purposes of this article, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(d) In performing its obligations to provide coverage under §33-26A-8 of this code, the association shall not be required to guarantee, assume, reinsure, reissue, or perform, or cause to be guaranteed, assumed, reinsured, reissued, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.


As used in this article:

(1) “Account” means either of the two accounts created under §33-26A-6 of this code.

(2) “Association” means the West Virginia Life and Health Insurance Guaranty Association created under §33-26A-6 of this code.

(3) “Authorized assessment” or the term “authorized” when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(4) “Benefit plan” means a specific employee, union, or association of natural persons benefit plan.
(5) “Called assessment” or the term “called” when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

(6) “Commissioner” means the Insurance Commissioner of West Virginia.

(7) “Contractual obligation” means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under §33-26A-3 of this code.

(8) “Covered contract” or “covered policy” means any policy or contract within the scope of this article under §33-26A-3 of this code.

(9) “Extra-contractual claims” shall include, for example, claims relating to bad faith in the payment of claims, punitive, or exemplary damages or attorneys’ fees and costs.

(10) “Health benefit plan” means any hospital or medical expense policy or certificate subject to §33-15-1 et seq. or §33-16-1 et seq. of this code and benefits provided subject to §33-24-1 et seq. or §33-25-1 et seq. of this code, or health maintenance organization subscriber contract or any other similar health contract subject to the provisions of §33-25A-1 et seq. of this code. “Health benefit plan” does not include:

(i) Accident only insurance;

(ii) Credit insurance;

(iii) Dental only insurance;

(iv) Vision only insurance;
(v) Medicare Supplement insurance;

(vi) Benefits for long-term care, home health care, community-based care, or any combination thereof;

(vii) Disability income insurance;

(viii) Coverage for on-site medical clinics; or

(ix) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.

(11) “Impaired insurer” means a member insurer which, after the effective date of this article, is not an insolvent insurer, and: (1) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations: or (2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(12) “Insolvent insurer” means a member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(13) “Member insurer” means any insurer or health maintenance organization licensed or which holds a certificate of authority to transact in this state any kind of insurance or health maintenance organization business for which coverage is provided under §33-26A-3 of this code, and includes an insurer or health maintenance organization whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, and includes nonprofit service corporations as defined in §33-24-1 et seq. of this code and health care corporations as defined in §33-25-1 et seq. of this code, but does not include:

(A) A fraternal benefit society;
(B) A mandatory state pooling plan;

(C) A mutual assessment company or any entity that operates on an assessment basis;

(D) An insurance exchange;

(E) An organization which has a certificate or license limited to the issuance of charitable gift annuities under §33-13B-1 et seq. of this code; or

(F) Any entity similar to any of the above.

(14) “Moody’s Corporate Bond Yield Average” means the Monthly Average Corporates as published by Moody’s Investors Service, Inc., or any successor thereto.

(15) “Owner” of a policy or contract and “policyholder”, “policy owner”, and “contract owner” mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the member insurer. The terms “owner”, “contract owner”, “policyholder”, and “policy owner” do not include persons with a mere beneficial interest in a policy or contract.

(16) “Person” means any individual, corporation, limited liability company, partnership, association, or voluntary organization.

(17) “Plan sponsor” means:

(A) The employer in the case of a benefit plan established or maintained by a single employer;

(B) The employee organization in the case of a benefit plan established or maintained by an employee organization; or
(C) In a case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(18) “Premiums” means amounts or considerations (by whatever name called) received on covered policies or contracts less premiums, considerations, and deposits, and less dividends and experience credits thereon. “Premiums” does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under §33-26A-3(b) of this code, except that assessable premium shall not be reduced on account of §33-26A-3(b)(2)(C) of this code relating to interest limitations and §33-26A-3(c)(2) of this code relating to limitations with respect to any one individual, one participant, and one policy or contract owner. Premiums shall not include:

(A) Premiums in excess of $5 million on any unallocated annuity contract not issued under a government retirement plan or its trustee established under sections 401, 403(b), or 457 of the United States Internal Revenue Code; or

(B) With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of $5 million with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(19) (A) “Principal place of business” of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the
entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(iv) The state in which the executive or management committee of the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings; and

(v) The state from which the management of the overall operations of the entity is directed;

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors; however

(vii) In the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(B) The principal place of business of a plan sponsor of a benefit plan described in §33-26A-5(17)(C) of this code shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or
employee organization that has the largest investment in the benefit plan in question.

(20) “Receivership court” means the court in the insolvent or impaired insurer’s state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer.

(21) “Resident” means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this article, shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts.

(22) “Structured settlement annuity” means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(23) “Supplemental contract” means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

(24) “Unallocated annuity contract” means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

§33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.

(a) There is created a nonprofit legal entity to be known as the West Virginia Life and Health Insurance Guaranty
Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance or a health maintenance organization business in this state. The association shall perform its functions under the plan of operation established and approved under §33-26A-10 of this code and shall exercise its powers through a board of directors established under §33-26A-7 of this code. For purposes of administration and assessment, the association shall maintain the following two accounts:

(1) The life insurance and annuity account which includes the following subaccounts:

(A) Life insurance account;
(B) Annuity account which shall include annuity contracts owned by a governmental retirement plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code, but shall otherwise exclude unallocated annuities; and
(C) Unallocated annuity account which shall exclude contracts owned by a governmental retirement plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code.

(2) The health account.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

§33-26A-7. Board of directors; members; vacancies; voting rights; appointment and reimbursement.

(a) The board of directors of the association shall consist of not less than seven nor more than 11 member insurers
serving terms as established in the plan of operation. The
members of the board shall be selected by member insurers
subject to the approval of the commissioner. Vacancies on
the board shall be filled for the remaining period of the term
by a majority vote of the remaining board members, subject
to the approval of the commissioner.

(b) To select the initial board of directors, and initially
organize the association, the commissioner shall give notice
to all member insurers of the time and place of the
organizational meeting. In determining voting rights at the
organizational meeting, each member insurer shall be
entitled to one vote in person or by proxy. If the board of
directors is not selected within 60 days after notice of the
organizational meeting, the commissioner may appoint the
initial members.

(c) In approving selections or in appointing members to
the board, the commissioner shall consider, among other
things, whether all member insurers are fairly represented.

(d) Members of the board may be reimbursed from the
assets of the association for expenses incurred by them as
members of the board of directors but members of the board
shall not otherwise be compensated by the association for
their services.


(a) If a member insurer is an impaired insurer, the
association may, in its discretion, and subject to any
conditions imposed by the association that do not impair the
contractual obligations of the impaired insurer, that are
approved by the commissioner:

(1) Guarantee, assume, reissue, or reinsure, or cause to
be guaranteed, assumed, reissued, or reinsured, any or all of
the covered policies or contracts of the impaired insurer; or

(2) Provide such moneys, pledges, notes, guarantees, or
other means as are proper to effectuate §33-26A-8(a)(1) of
this code and assure payment of the contractual obligations of the impaired insurer pending action under said §33-26A-8(a)(1) of this code.

(b) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

1. (A) (i) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer; or

(ii) Assure payment of the contractual obligations of the insolvent insurer; and

(B) Provide moneys, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or

2. Provide benefits and coverages in accordance with the following provisions:

(A) With respect to policies and contracts, assure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to such policies and contracts;

(ii) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under these policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to such policies or contracts;

(B) Make diligent efforts to provide all known insureds, enrollees, or annuitants, or group policy or contract owners
with respect to group policies and contracts 30-days’ notice
of the termination (pursuant to §33-26A-8(b)(2)(A) of this
code) of the benefits provided;

(C) With respect to nongroup policies and contracts
covered by the association, make available to each known
insured, enrollee, or annuitant, or owner if other than the
insured or annuitant, and with respect to an individual
formerly an insured, enrollee, or annuitant under a group
policy or contract who is not eligible for replacement group
coverage, make available substitute coverage on an
individual basis in accordance with the provisions of §33-
26A-8(b)(2)(D) of this code, if the insureds, enrollees, or
annuitants had a right under law or the terminated policy,
contract, or annuity to convert coverage to individual
coverage or to continue an individual policy, contract, or
annuity in force until a specified age or for a specified time,
during which the insurer or health maintenance organization
had no right unilaterally to make changes in any provision
of the policy, contract, or annuity or had a right only to make
changes in premium by class;

(D) (i) In providing the substitute coverage required
under §33-26A-8(b)(2)(C) of this code, the association may
offer either to reissue the terminated coverage or to issue an
alternative policy or contract at actuarially justified rates,
subject to the prior approval of the commissioner;

(ii) Alternative or reissued policies or contracts shall be
offered without requiring evidence of insurability, and shall
not provide for any waiting period or exclusion that would
not have applied under the terminated policy or contract;

(iii) The association may reinsure any alternative or
reissued policy or contract.

(E) (i) Alternative policies or contracts adopted by the
association shall be subject to the approval of the
commissioner. The association may adopt alternative
policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(iii) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the association.

(F) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium shall be actuarially justified and set by the association in accordance with the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the commissioner;

(G) The association’s obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date that the coverage or policy or contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the association;

(H) When proceeding under this subdivision with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with §33-26A-3(b)(2)(C) of this code.
(c) Nonpayment of premium within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association’s obligations under such policy, contract, or coverage under this article with respect to such policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this article.

(d) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association. If the liquidator of an insolvent insurer requests, the association shall provide a report to the liquidator regarding such premium collected by the association. The association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(e) The protection provided by this article shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(f) In carrying out its duties under §33-26A-8(b) of this code, the association may, subject to approval by a court in this state:

1. Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association’s duties under this article, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest;
(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(g) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy or contract owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer domiciled in this state or in a reciprocal state, pursuant to §33-10-1 et seq. of this code, shall be promptly paid to the association. The association shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy or contract owners’ claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy or contract owners’ claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association less the amount retained pursuant to this subsection. Any amount so paid to the association and retained by it shall be treated as a distribution of estate assets pursuant to §33-10-1 et seq. of this code.
(h) If the association fails to act within a reasonable period of time with respect to an insolvent insurer as provided in §33-26A-8(b) of this code, the commissioner shall have the powers and duties of the association under this article with respect to the insolvent insurer.

(i) The association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(j) The association shall have standing to appear or intervene before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article. Standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(k) (1) Any person receiving benefits under this article shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The association may require an assignment to it of such rights and cause of action by any enrollee, payee, policy, or contract owner,
beneficiary, insured, or annuitant as a condition precedent
to the receipt of any right or benefits conferred by this article
upon such person.

(2) The subrogation rights of the association under this
subsection shall have the same priority against the assets of
the impaired or insolvent insurer as that possessed by the
person entitled to receive benefits under this article.

(3) In addition to §33-26A-8(k)(1) and §33-26A-8(k)(2)
of this code, the association shall have all common law
rights of subrogation and any other equitable or legal
remedy that would have been available to the impaired or
insolvent insurer or owner, beneficiary, enrollee, payee, or
insured of a policy or contract with respect to such policy or
contracts.

(4) If the preceding provisions of this subsection are
invalid or ineffective with respect to any person or claim for
any reason, the amount payable by the association with
respect to the related covered obligations shall be reduced
by the amount realized by any other person with respect to
the person or claim that is attributable to the policies or
contracts, or portion thereof, covered by the association.

(5) If the association has provided benefits with respect
to a covered obligation and a person recovers amounts as to
which the association has rights as described in this
subsection, the person shall pay to the association the
portion of the recovery attributable to the policies or
contracts, or portion thereof, covered by the association.

(l) In addition to the rights and powers elsewhere in this
article, the association may:

(1) Enter into such contracts as are necessary or proper
to carry out the provisions and purposes of this article;

(2) Sue or be sued, including taking any legal actions
necessary or proper to recover any unpaid assessments
under §33-26A-9 of this code and to settle claims or potential claims against it;

(3) Borrow money to effect the purpose of this article; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic member insurers and may be carried as admitted assets;

(4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this article;

(5) Take such legal action as may be necessary to avoid or recover payment of improper claims;

(6) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life insurer, health insurer, or health maintenance organization, but in no case may the association issue policies or contracts other than those issued to perform its obligations under this article;

(7) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(8) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this article with respect to the person, and the person shall promptly comply with the request;

(9) Unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this article; and

(10) Take other necessary or appropriate action to discharge its duties and obligations under this article or to exercise its powers under this article.
(m) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(n) (1) (A) At any time within 180 days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies, contracts, or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(B) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings: (i) Copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and (ii) notices of any defaults under the reinsurance contacts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(C) The following subparagraphs shall apply to reinsurance contracts so assumed by the association:

(i) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other
obligations to be performed after the date of the order of liquidation, in each case which relate to policies, contracts, or annuities covered, in whole or in part, by the association. The association may charge policies, contracts, or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator.

(ii) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies, contracts, or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy, contract, or annuity on account of which the amounts were paid a portion of the amount equal to lesser of:

(I) The amount received by the association; and

(II) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy, contract, or annuity less the retention of the insurer applicable to the loss or event.

(iii) Within 30 days following the association’s election (the “election date”), the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies, contracts, or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the member insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the
association or reinsurer shall pay any remaining balance due
the other, in each case within five days of the completion of
the aforementioned calculation. Any disputes over the
amounts due to either the association or the reinsurer shall
be resolved by arbitration pursuant to the terms of the
affected reinsurance contracts or, if the contract contains no
arbitration clause, as otherwise provided by law. If the
receiver has received any amounts due the association
pursuant to §33-26A-8(n)(1)(C)(ii) of this code, the receiver
shall remit the same to the association as promptly as
practicable.

(iv) If the association or receiver, on the association’s
behalf, within 60 days of the election date, pays the unpaid
premiums due for periods both before and after the election
date that relate to policies, contracts, or annuities covered,
in whole or in part, by the association, the reinsurer shall not
be entitled to terminate the reinsurance contracts for failure
to pay premium insofar as the reinsurance contracts relate to
policies, contracts, or annuities covered, in whole or in part,
by the association, and shall not be entitled to set off any
unpaid amounts due under other contracts, or unpaid
amounts due from parties other than the association, against
amounts due the association.

(2) During the period from the date of the order of
liquidation until the election date or, if the election date does
not occur, until 180 days after the date of the order of
liquidation:

(A) (i) Neither the association nor the reinsurer shall
have any rights or obligations under reinsurance contracts
that the association has the right to assume under §33-26A-
8(n)(1) of this code, whether for periods prior to or after the
date of the order of liquidation; and

(ii) The reinsurer, the receiver, and the association shall,
to the extent practicable, provide each other data and records
reasonably requested;
Provided that once the association has elected to assume a reinsurance contract, the parties’ rights and obligations shall be governed by §33-26A-8(n)(1) of this code.

If the association does not elect to assume a reinsurance contract by the election date pursuant to §33-26A-8(n)(1) of this code, the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

When policies, contracts, or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies, contracts, or annuities may also be transferred by the association, in the case of contracts assumed under §33-26A-8(n)(1) of this code, subject to the following:

(A) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance, contracts, or annuities in addition to those transferred;

(B) The obligations described in §33-26A-8(n)(1) of this code shall no longer apply with respect to matters arising after the effective date of the transfer; and

(C) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days prior to the effective date of the transfer.

The provisions of this subsection shall supersede the provisions of any state law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the
reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(6) Except as otherwise provided in this subsection, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this subsection shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this subsection shall give a policyholder, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this subsection shall limit or affect the association’s rights as a creditor of the estate against the assets of the estate. Nothing in this subsection shall apply to reinsurance agreements covering property or casualty risks.

(o) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this article in an economical and efficient manner.

(p) Where the association has arranged or offered to provide the benefits of this article to a covered person under a plan or arrangement that fulfills the association’s obligations under this article, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(q) Venue in a suit against the association arising under the article shall be in Kanawha County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this act.

(r) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under §33-26A-8(a) or §33-26A-8(b) of this code, the association may issue substitute coverage for a policy or
contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(1) In lieu of the index or other external reference provided in the original policy or contract, the alternative policy or contract provides for:

(i) A fixed interest rate;

(ii) Payment of dividends with minimum guarantees; or

(iii) A different method for calculating interest or changes in value;

(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.


(a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at 10 percent per annum on and after the due date.

(b) There shall be two classes of assessments, as follows:
(1) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under §33-26A-8 of this code with regard to an impaired or insolvent insurer.

(c) (1) The amount of any Class A assessment shall be determined by the board and may be authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments.

(2) The amount of any Class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes between the accounts and among the subaccounts of the life insurance and annuity account, pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board in its sole discretion as being fair and reasonable under the circumstances.

(3) The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the commissioner. The methodology shall provide for 50 percent of the assessment to be allocated to accident and health member insurers and 50 percent to be allocated to life and annuity member insurers.

(4) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by...
each account for the three most recent calendar years for which information is available preceding the year in which the member insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(5) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this article. Classification of assessments under §33-26A-9(b) of this code and computation of assessments under this subsection shall be made with reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(e) (1) (A) Subject to the provisions of §33-26A-9(e)(1)(B) of this code, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life and annuity account and for the health account shall not in any one calendar year exceed two percent of such insurer’s average annual
premiums received in this state on the policies and contracts
covered by the subaccount or account during the three
calendar years preceding the year in which the member
insurer became an impaired or insolvent insurer.

(B) If two or more assessments are authorized in one
calendar year with respect to member insurers that become
impaired or insolvent in different calendar years, the
average annual premiums for purposes of the aggregate
assessment percentage limitation referenced in §33-26A-
9(e)(1)(A) of this code shall be equal and limited to the
higher of the three-year average annual premiums for the
applicable subaccount or account as calculated pursuant to
this section.

(C) If the maximum assessment, together with the other
assets of the association in an account, does not provide in
any one year in either account an amount sufficient to carry
out the responsibilities of the association, the necessary
additional funds shall be assessed as soon thereafter as
permitted by this article.

(2) The board may provide in the plan of operation a
method of allocating funds among claims, whether relating
to one or more impaired or insolvent insurers, when the
maximum assessment will be insufficient to cover
anticipated claims.

(3) If the maximum assessment for any subaccount of
the life and annuity account in any one year does not provide
an amount sufficient to carry out the responsibilities of the
association, then pursuant to §33-26A-9(c)(2) of this code,
the board shall assess all subaccounts of the life and annuity
account for the necessary additional amount, subject to the
maximum stated in §33-26A-9(e)(1) of this code.

(f) The board may, by an equitable method as
established in the plan of operation, refund to member
insurers, in proportion to the contribution of each member
insurer to that account, the amount by which the assets of
the account exceed the amount the board finds is necessary
to carry out during the coming year the obligations of the
association with regard to that account, including assets
accruing from assignment, subrogation, net realized gains,
and income from investments. A reasonable amount may be
retained in any account to provide funds for the continuing
expenses of the association and for future claims.

(g) It shall be proper for any member insurer, in
determining its premium rates and policy owner dividends
as to any kind of insurance or health maintenance
organization business within the scope of this article, to
consider the amount reasonably necessary to meet its
assessment obligations under this article.

(h) The association shall issue to each member insurer
paying an assessment under this article, other than Class A
assessment, a certificate of contribution, in a form
prescribed by the commissioner, for the amount of the
assessment so paid. All outstanding certificates shall be of
equal dignity and priority without reference to amounts or
dates of issue. A certificate of contribution may be shown
by the member insurer in its financial statement as an asset
in such form and for such amount, if any, and period of time
as the commissioner may approve.

(i) (1) A member insurer that wishes to protest all or part
of an assessment shall pay when due the full amount of the
assessment as set forth in the notice provided by the
association. The payment shall be available to meet
association obligations during the pendency of the protest
or any subsequent appeal. Payment shall be accompanied by
a statement in writing that the payment is made under
protest and setting forth a brief statement of the grounds for
the protest.

(2) Within 60 days following the payment of an
assessment under protest by a member insurer, the
association shall notify the member insurer in writing of its
determination with respect to the protest unless the
association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(3) Within 30 days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association.

(j) The association may request information of member insurers in order to aid in the exercise of its power under this section, and member insurers shall promptly comply with a request.


In addition to the duties and powers enumerated elsewhere in this article:

(a) The commissioner shall:

(1) Upon request of the board of directors, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer;

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall
constitute notice to its shareholders, if any; the failure of the impaired insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this article; and

(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business 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 forfeiture on any member insurer which fails to pay an assessment when due. The forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than $100 per month.

(c) A final action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 60 days of its receipt of notice of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(d) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this article.

§33-26A-12. Prevention of insolvencies; duties of commissioner; coordination with board of directors; duties of the board of directors; requested examinations; procedures and reports.
To aid in the detection and prevention of member insurer insolvencies or impairments:

(a) It shall be the duty of the commissioner:

1. To notify the commissioners of all the other states, territories of the United States, and the District of Columbia within 30 days following the action taken or the date the action occurs, when the commissioner takes any of the following actions against a member insurer:
   
   (A) Revocation of license;
   
   (B) Suspension of license; or
   
   (C) Makes any formal order that the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors.

2. To report to the board of directors when the commissioner has taken any of the actions set forth in §33-26A-12(a)(1) of this code or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

3. To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer.

4. To furnish to the board of directors the National Association of Insurance Commissioners (NAIC) Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the NAIC, and the board may use the information contained
therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the board of directors until it is made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his or her duties and responsibilities regarding the financial condition of member insurers and insurers or health maintenance organizations seeking admission to transact business in this state.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any insurer or health maintenance organization seeking to do business in this state. The reports and recommendations shall not be considered public documents.

(d) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

(e) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.


(a) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in
carrying out its powers and duties under §33-26A-8 of this code. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under §33-26A-15 of this code.

(c) For the purpose of carrying out its obligations under this article, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as assignee or subrogee pursuant to §33-26A-8(k) of this code. All assets of the impaired or insolvent insurer attributable to covered policies or contracts shall be used to continue all covered policies or contracts and pay all contractual obligations of the impaired or insolvent insurer as required by this article. Assets attributable to covered policies or contracts, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies or contracts bear to the reserves that should have been established for all policies of insurance or health benefit plans written by the impaired or insolvent insurer.

(d) As a creditor of the impaired or insolvent insurer as established in §33-26A-14(c) of this code and consistent with §33-10-1 et seq. of this code, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this article. If the liquidator has not, within 120 days of a final determination of insolvency of a member insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because
of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(e)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, contract owners, certificate holders, enrollees, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In making such a determination, consideration shall be given to the welfare of the policy owners, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under §33-26A-8 of this code with respect to the member insurer have been fully recovered by the association.

(f)(1) If an order for liquidation or rehabilitation of a member insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the member insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of this subsection.

(2) No such distribution shall be recoverable if the member insurer shows that when paid the distribution was lawful and reasonable, and that the member insurer did not know and could not reasonably have known that the
distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(3) Any person who, as an affiliate, controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions received. Any person who, as an affiliate, controlled the member insurer at the time the distributions were declared, shall be liable up to the amount of distributions which would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person under §33-26A-14(f)(3) of this code is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

(a) A person, including a member insurer, agent, or affiliate of a member insurer, shall not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance or other coverage covered by the West Virginia Life and Health Insurance Guaranty
Association Act: Provided, That this section shall not apply to the association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

(b) Within 180 days of the effective date of this article, the association shall prepare a summary document describing the general purposes and current limitations of the act and complying with §33-26A-19(c) of this code. This document should be submitted to the commissioner for approval. Sixty days after receiving such approval, no member insurer may deliver a policy or contract described in §33-26A-3(b)(1) of this code to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner, certificate holder, or enrollee prior to or at the time of delivery of the policy or contract except if §33-26A-19(d) of this code applies. The document should also be available upon request by a policy owner, contract owner, certificate holder, or enrollee. The distribution, delivery, or contents or interpretation of this document shall not guarantee that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the article may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this article.

(c) The document prepared under §33-26A-19(b) of this code shall contain a clear and conspicuous disclaimer on its face. The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code establishing the form and content of the disclaimer. The disclaimer shall:

(1) State the name and address of the association and insurance department;
(2) Prominently warn the policy owner, contract owner, certificate holder, or enrollee that the association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(3) State the types of policies or contracts for which guaranty funds will provide coverage;

(4) State that the member insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or health maintenance organization coverage;

(5) Emphasize that the policy owner, contract owner, certificate holder, or enrollee should not rely on coverage under the association when selecting an insurer or health maintenance organization;

(6) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this article; and

(7) Provide other information as directed by the commissioner.

(d) An insurer or agent may not deliver a policy or contract described in §33-26A-3(b)(1) of this code and excluded under §33-26A-3(b)(2)(A) of this code from coverage under this article unless the insurer or agent, prior to or at the time of delivery, gives the policy owner, contract owner, certificate holder, or enrollee a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the association. The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code specifying the form and content of the notice.
CHAPTER 128
(Com. Sub. for S. B. 495 - By Senator Azinger)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §33-20-4 of the Code of West Virginia, 1931, as amended, relating to commercial insurance rates; and designating specific insurance coverages which are exempt from the requirements of filing rates with the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4. Rate filings.

(a) (1) Every insurer shall file with the commissioner every manual of classifications, territorial rate areas established pursuant to §33-20-3(c)(2) of this code, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use for casualty insurance to which this article applies.

(2) Every insurer shall file with the commissioner, except as to inland marine risks which, by general custom of the business, are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule, or rating plan and every other rating rule and every modification of any of the foregoing which it proposes to use for fire and marine insurance to which this article applies. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.
(3) Subject to §33-20-4(a)(4) and §33-20-4(a)(5) of this code and the requirements for ratemaking in §33-20-3 of this code, the following commercial lines insurance coverages are exempt from rate-filing requirements under this article with respect to every manual, minimum, class rate, rating schedule, or rating plans, and every other rating rule and modification of any of the foregoing, whether the insurance coverage is endorsed to, or otherwise made part of, another kind of insurance policy or sold as a stand-alone policy:

(A) Surety and fidelity;
(B) Commercial inland marine;
(C) Boiler and machinery;
(D) Environmental impairment or pollution liability;
(E) Kidnap and ransom;
(F) Political risk or expropriation;
(G) Excess and umbrella liability;
(H) Directors’ and officers’ liability;
(I) Fiduciary liability;
(J) Employment practices liability;
(K) Errors and omission other than medical malpractice;
(L) Professional liability other than medical malpractice;
(M) Media liability;
(N) Commercial lines travel risk, including accidental death and dismemberment;
(O) Product liability, product recall, and completed operations;
(P) Cybersecurity, including first and third-party commercial lines coverage for losses arising out of or relating to data privacy breach, network security, computer viruses, and similar exposures;

(Q) Highly protected commercial property;

(R) All commercial lines insurance coverages not excluded under §33-20-4(a)(4) of this code when purchased by a commercial policyholder with aggregate annual commercial insurance premiums of $25,000 or more excluding premiums for the types of insurance excluded under §33-20-4(a)(4) of this code; and

(S) Any other commercial lines insurance coverage or risk that the commissioner may, by order, exempt from rate filing and approval requirements in order to promote enhanced competition or to more effectively use the resources of the department that might otherwise be used to review commercial lines filings or because the commissioner does not consider the filing and approval requirements to be necessary or desirable for the protection of the public.

(4) The exemptions from rate filing requirements in §33-20-4(a)(3) of this code are not applicable to the following kinds of commercial insurance:

(A) Workers’ compensation;

(B) Medical malpractice liability;

(C) Nonfleet commercial automobile liability policies covering four or fewer vehicles;

(D) Any coverage issued by an assigned risk or residual market plan pursuant to §33-20-15 of this code, §33-20A-1 et seq. of this code, or the Mine Subsidence Insurance Fund created pursuant to §33-30-1 et seq. of this code.
(5) The commissioner may temporarily reinstate, for a period of no longer than one year, the requirement for rate filings for a specific insurance coverage set forth in §33-20-4(a)(3) of this code if, after a hearing, the commissioner makes a finding of fact that a reasonable degree of competition does not exist for that specific type of insurance coverage. The finding of fact by the commissioner must specify the relevant tests used to determine whether a lack of a reasonable degree of competition exists and the results thereof. In the absence of such findings of fact by the commissioner, a competitive market is presumed to exist.

(b) Every filing shall state the proposed effective date and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, he or she shall require the insurer to furnish the information upon which it supports the filing and in that event the waiting period shall commence as of the date the information is furnished. The information furnished in support of a filing may include: (1) The experience or judgment of the insurer or rating organization making the filing; (2) the experience or judgment of the insurer or rating organization in the territorial rate areas established by §33-20-3(c)(2) of this code; (3) its interpretation of any statistical data it relies upon; (4) the experience of other insurers or rating organizations; or (5) any other relevant factors. A filing and any supporting information is open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his or her position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and supporting his or her or its position concerning the filing. Upon receipt of the statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of the statement to the filer, which may file a reply as it may desire to make.
This section is not applicable to any memorandum or statement of any kind by any employee of the commissioner.

(c) An insurer may satisfy its obligation to make a filing by becoming a member of, or a subscriber to, a licensed rating organization which makes filings and by authorizing the commissioner to accept filings on its behalf: Provided, That nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(d) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this article.

(e) Subject to the exceptions specified in §33-20-4(f), §33-20-4(g) and §33-20-4(h) of this code, each filing shall be on file for a waiting period of 60 days before it becomes effective. Upon written application by an insurer or rating organization, the commissioner may authorize a filing which he or she has reviewed to become effective before the expiration of the waiting period. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period.

(f) Any special filing with respect to a surety bond required by law or by court or executive order or by order, rule, or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this article until the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(g) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this article until the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(h) Except as provided in §33-20-4(a)(3) of this code, rates for commercial lines property and casualty risks must be filed
with the commissioner and the filings need not be approved by the commissioner. The commissioner may request additional information to ensure compliance with applicable statutory standards, but if the commissioner does not disapprove the filing within the initial 30-day period after receipt, the rate filing will become effective upon first usage after filing: Provided, That the commissioner may at any time thereafter, after notice and for cause shown, disapprove any rate filing.

(i) Under legislative rules, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. These orders and rules shall be made known to insurers and rating organizations affected thereby. The commissioner may make any examination he or she may consider advisable to ascertain whether any rates affected by an order meet the standards set forth in §33-20-3(b) of this code.

(j) Upon the written application of the insured, stating his or her reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risks.

(k) No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for that insurer as provided in this article. This subsection does not apply to contracts or policies for risks as to which filings are not required.

(l) In instances when an insurer files a request for an increase of automobile liability insurance rates in the amount of 15 percent or more, the Insurance Commissioner shall provide notice of the increase with the Office of the Secretary of State to be filed in the State Register and shall provide interested persons the opportunity to comment on the request up to the time the commissioner approves or disapproves the rate increase.

(m) For purposes of this section, “commercial” means commercial lines as defined in §33-6-8(e)(2) of this code.
CHAPTER 129

(Com. Sub. for H. B. 4175 - By Delegates Sobonya, Summers, Criss, Rohrbach, Hollen, Westfall and Lovejoy)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-22, relating to requiring payment for health care services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-22. Payment for services; collaborative relationship is not required.

1 An insurance company or managed care organization may not require an advanced practice registered nurse to participate in a collaborative agreement in order to obtain payment for his or her services.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-23, relating generally to guaranteed asset protection waivers; providing short title, purpose, legislative intent, and applicability of section; defining certain terms; specifying requirements for offering guaranteed asset protection waivers; providing that guaranteed asset protection waivers are not insurance and are exempt from the insurance laws of this state; providing further exemptions; defining certain terms; providing requirements for offering guaranteed asset protection waivers; requiring contractual liability or other insurance policies on guaranteed asset protection waivers in certain circumstances; requiring certain disclosures; providing for cancellation or non-cancellation; specifying requirements upon cancellation in certain circumstances; exempting certain requirements in commercial transactions; exempting guaranteed asset protection waivers sold and/or issued by a federally regulated depository institution; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-23. Guaranteed Asset Protection Waivers.

1   (a) Short title. – This section may be cited as the
2   “Guaranteed Asset Protection Waiver Act.”
(b) **Purpose.** – The purpose of this section is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(c) **Legislative intent.** – The Legislature finds that guaranteed asset protection waivers are not insurance and are not subject to the provisions of this chapter, except as provided in this section. Guaranteed asset protection waivers issued after the effective date of this section may not be construed as insurance and persons marketing, administering, selling or offering to sell guaranteed asset protection waivers are not required to comply with insurance licensing requirements.

(d) **Applicability.** – This section does not apply to:

1. An insurance policy offered by an insurer under the insurance laws of this state; or
2. A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. §37.1, *et seq.*, 12 C.F.R. §721.1, *et seq.*, or other federal law.

(e) **Waivers not insurance; exemption from licensing requirement.** – Guaranteed asset protection waivers governed by, and issued after the effective date of this section, are not insurance and are exempt from the insurance laws of this state. Persons marketing, administering, selling or offering to sell guaranteed asset protection waivers to borrowers that comply with this section are exempt from this state’s insurance licensing requirement with regard to the marketing, selling or offering to sell guaranteed asset protection waivers.

(f) **Definitions.** – The following terms are defined for purposes of this section. These terms are not intended to be used or required in guaranteed asset protection waivers.

1. “Administrator” means a person, other than an insurer or creditor, who performs administrative or operational functions pursuant to guaranteed asset
protection waiver programs. Administrative or operational functions may include, but are not limited to:

(A) Document development, processing, and support;
(B) Compliance Services;
(C) Waiver fee processing;
(D) Benefit determination and processing;
(E) Procurement and administration of the contractual liability or other insurance policy;
(F) Technology support; or
(G) Personnel support.

(2) “Borrower” means a debtor, retail buyer, or lessee under a finance agreement.

(3) “Contractual liability” means a contract or other agreement that obligates a third party to indemnify a creditor under (g)(4) of this section and is insurance under the insurance laws of this state.

(4) “Creditor” means:
(A) The lender in a loan or credit transaction;
(B) The lessor in a lease transaction;
(C) A retail dealer of motor vehicles licensed under §17A-6-1 et seq. of this code, that provides credit to buyers as part of a retail sale, provided the dealer complies with the requirements of this section;
(D) The seller in a commercial retail installment transaction; or
(E) The assignees of any of the foregoing persons to whom the credit obligation is payable.
(5) “Finance agreement” means a loan, lease or retail installment sales contract for the purchase or lease of a motor vehicle.

(6) “Free look period” means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees or costs to the borrower. This period of time may not be less than thirty days.

(7) “Guaranteed asset protection waiver” means a contractual agreement that is part of or a separate addendum to the finance agreement in which a creditor agrees, upon payment of a separate charge, to cancel or waive all or part of amounts due to it on a borrower’s finance agreement if there is a total physical damage loss or unrecovered theft of a motor vehicle. A guaranteed asset protection waiver is not insurance due to the purchase, administration or operation of the contractual liability or other insurance policy authorized under subdivision (g)(4) of this section.

(8) “Insurer” means an insurance company required to be licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(9) “Motor vehicle” means a self-propelled or towed vehicle designed for personal or commercial use, including, but not limited to, an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat or personal watercraft, and the trailer used to transport a motorcycle, boat, camper or personal watercraft.

(10) “Person” includes an individual, company, association, organization, partnership, limited liability company, business trust, corporation and every form of legal entity.

(g) Requirements for offering guaranteed asset protection waivers. –
(1) Guaranteed asset protection waivers may be offered, sold or provided to borrowers in this state in compliance with this section.

(2) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. §1601, et seq., must be separately stated and may not be considered a finance charge or interest.

(4) A retail dealer of motor vehicles shall insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail dealer of motor vehicles, may insure its guaranteed asset protection waiver obligations under a contractual liability policy or similar policy issued by an insurer. The insurance policy may be directly obtained by a creditor, a retail dealer of motor vehicles or may be procured by an administrator to cover a creditor’s or retail dealer’s obligations: Provided, That retail dealers of motor vehicles that are lessors of motor vehicles are not required to insure obligations related to guaranteed asset protection waivers on leased vehicles.

(5) The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) The extension of credit, the terms of credit or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of a guaranteed asset protection waiver.

(7) A creditor that offers a guaranteed asset protection waiver shall report the sale of and forward funds received on all guaranteed asset protection waivers to the designated
party, if any, as prescribed in any applicable administrative
services agreement, contractual liability policy, other
insurance policy or other specified program document.

(8) Funds received or held by a creditor or administrator
and belonging to an insurer, creditor or administrator,
pursuant to the terms of a written agreement must be held
by the creditor or administrator in a fiduciary capacity.

(h) Contractual liability or other insurance policies. –

(1) Contractual liability or other insurance policies
insuring guaranteed asset protection waivers must state the
obligation of the insurer to reimburse or pay to the creditor
any sums the creditor is legally obligated to waive under the
guaranteed asset protection waivers issued by the creditor
and purchased or held by the borrower.

(2) Coverage under a contractual liability or other
insurance policy insuring a guaranteed asset protection
waiver must also cover any subsequent assignee upon the
assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other
insurance policy insuring a guaranteed asset protection
waiver must remain in effect unless canceled or terminated
in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual
liability or other insurance policy may not reduce the
insurer’s responsibility for guaranteed asset protection
waivers issued by the creditor prior to the date of
cancellation or termination and for which premiums have
been received by the insurer.

(i) Disclosures. –

Guaranteed asset protection waivers must disclose, as
applicable, in writing and in clear, understandable language,
the following:
(A) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;

(B) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation the requirements for protection, conditions or exclusions associated with the guaranteed asset protection waiver;

(C) That the borrower may cancel the guaranteed asset protection waiver within a free look period as specified in the waiver, and may receive a full refund of the purchase price, so long as no benefits have been provided under the waiver; or if benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(D) The procedure a borrower must follow, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may initiate activation of waiver benefits. Once activation of waiver benefits has been initiated, and until such time as the request for a benefit under the GAP waiver is resolved, the GAP waiver shall not be terminated or cancelled, nor shall a request for a benefit under the GAP waiver be denied, by the creditor, administrator or other designated party, solely due to the borrower’s failure to make monthly payments owed for the GAP waiver purchase price;

(E) Whether the guaranteed asset protection waiver may be canceled after the free look period and the conditions under which it may be canceled or terminated, including the procedures for requesting any refund due;

(F) That in order to receive any refund due if a borrower cancels the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall
provide a written request to cancel to the creditor, administrator or other party as specified in the guaranteed asset protection waiver. If a borrower is canceling the guaranteed asset protection waiver due to early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator or other party within ninety days of the occurrence of the event terminating the finance agreement;

(G) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due if there is cancellation of the guaranteed asset protection waiver or early termination of the finance agreement; and

(H) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.

(j) Cancellation. –

(1) Guaranteed asset protection waiver agreements may be cancellable or non-cancellable after the free look period. Guaranteed asset protection waivers must provide that if a borrower cancels a guaranteed asset protection waiver within the free look period, so long as no benefits have been provided, the borrower is entitled to a full refund of the purchase price. If benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(2) If the borrower cancels the guaranteed asset protection waiver or terminates the finance agreement early but after the agreement has been in effect beyond the free look period, the borrower may receive a refund of any unearned portion of the purchase price of the guaranteed asset protection waiver unless the guaranteed asset protection waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable
terms of the waiver, shall provide a written request to the
creditor, administrator or other party. If the borrower is
canceling the guaranteed asset protection waiver due to the
early termination of the finance agreement, the borrower
shall provide a written request within ninety days of the
event terminating the finance agreement;

(3) If the cancellation of a guaranteed asset protection
waiver occurs as a result of a default under the finance
agreement, or the repossession of the motor vehicle
associated with the finance agreement, or any other
termination of the finance agreement, any refund due may
be paid directly to the creditor or administrator and applied
as set forth in subdivision (4) of this subsection (i), below;

(4) A cancellation or termination refund under
subdivision (1), (2) or (3) of this subsection (i) may be
applied by the creditor as a reduction of the amount owed
under the finance agreement, unless the borrower can show
that the finance agreement has been paid in full.

(k) Commercial transaction exempted. – Subsections
(g), (h) and (i) of this section do not apply to a guaranteed
asset protection waiver offered in connection with a lease or
retail installment sale associated with a “commercial
transaction.”

(l) Exemption. – This section does not apply to
guaranteed asset protection waivers sold and/or issued by a
federally regulated depository institution.

(m) Effective date. – This section shall apply to all
guaranteed asset protection waivers which become effective
on or after July 1, 2018.
AN ACT to amend and reenact §33-4-15a of the Code of West Virginia, 1931, as amended, relating to credit for reinsurance; purpose; establishing requirements for domestic insurers to be allowed a credit; requirements for reinsurers; establishing where assets that provide security to fund United States obligations are to be maintained by a non-United States insurer or reinsurer; providing for the filing and valuation of claims, and the distribution of assets of an insolvent non-United States insurer or reinsurer; providing for an asset or reduction from liability for reinsurance ceded by a domestic insurer when certain requirements are not met; defining a qualified United States financial institution; providing authority to the Insurance Commissioner to promulgate legislative and emergency rules; effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance.

(a) The purpose of this section is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The Legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers, and the adequate protection for those to whom they owe obligations. In furtherance of that stated interest, it is hereby mandated that upon the insolvency of a non-
United States insurer or reinsurer that provides security to fund its United States obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature further declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.

(b) (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (b)(2)(A), (B), (C), (D), (E) or (F) of this section; provided further, that the commissioner may adopt by rule pursuant to subdivision (e)(2) of this section additional requirements relating to or setting forth:

(A) The valuation of assets or reserve credits;

(B) The amount and forms of security supporting reinsurance arrangements described in subdivision (e)(2) of this section; and/or

(C) The circumstances pursuant to which credit will be reduced or eliminated.

(2) Credit shall be allowed under paragraph (b)(2)(A), (B), or (C) of this section only with respect to cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under paragraph (b)(2)(C) or (D) of this section only if the applicable
requirements of paragraph (b)(2)(G) of this section have been satisfied.

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(B) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. To be eligible for accreditation, a reinsurer must:

(i) File with the commissioner evidence of its submission to this state’s jurisdiction;

(ii) Submit to this state’s authority to examine its books and records;

(iii) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(iv) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(v) Demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than $20 million and its accreditation has not been denied by the commissioner within 90 days after submission of its application.

(C)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer
is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(I) Maintains a surplus as regards policyholders in an amount not less than $20 million; and

(II) Submits to the authority of this state to examine its books and records.

(ii) The requirement of clause (b)(2)(C)(i)(I) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(D)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in subdivision (d)(2) of this section, for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners’ Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

(ii)(I) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.
(II) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer’s United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(III) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing the balance of the trust and listing the trust’s investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(iii) The following requirements apply to the following categories of assuming insurer:

(I) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer’s liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million, except as provided in clause (b)(2)(D)(iii)(II) of this section.

(II) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for
the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer’s liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent of the assuming insurer’s liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(III)(a) In the case of a group including incorporated and individual unincorporated underwriters for reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters’ several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.

(b) In the case of a group including incorporated and individual unincorporated underwriters for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trusteed account in an amount not less than the respective underwriters’ several insurance and reinsurance liabilities attributable to business written in the United States.

(c) In addition to the trusts described in subclauses (b)(2)(D)(iii)(III)(a) and (b) of this section, the group shall maintain in trust a trusteed surplus of which $100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.
(d) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group’s domiciliary regulator as are the unincorporated members.

(e) Within ninety days after its financial statements are due to be filed with the group’s domiciliary regulator, the group shall provide to the commissioner an annual certification by the group’s domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(IV) In the case of a group of incorporated underwriters under common administration, the group shall:

(a) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation;

(b) Maintain aggregate policyholders’ surplus of at least $10 billion;

(c) Maintain a trust fund in an amount not less than the group’s several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(d) In addition, maintain a joint trusteed surplus of which $100 million shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(e) Within ninety days after its financial statements are due to be filed with the group’s domiciliary regulator, make available to the commissioner an annual certification of each underwriter member’s solvency by the member’s domiciliary regulator and financial statements of each
underwriter member of the group prepared by its independent public accountant.

(E) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this paragraph.

(i) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(I) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subparagraph (b)(2)(E)(iii) of this section;

(II) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to a rule promulgated under subsection (e) of this section;

(III) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to a rule promulgated under subsection (e) of this section;

(IV) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for 100 percent of the assuming insurer’s liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(V) The assuming insurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and
(VI) The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.

(ii) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subparagraph (b)(2)(E)(i) of this section:

(I) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

(II) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association’s domiciliary regulator as are the unincorporated members; and

(III) Within ninety days after its financial statements are due to be filed with the association’s domiciliary regulator, the association shall provide to the commissioner an annual certification by the association’s domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(iii) The commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.
(I) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(II) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners’ Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed by rules promulgated pursuant to subsection (e) of this section.

(III) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners’ financial standards and accreditation program shall be recognized as qualified jurisdictions.

(IV) If a certified reinsurer’s domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer’s certification indefinitely, in lieu of revocation.
(iv) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner as developed by rules promulgated pursuant to subsection (e) of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(v) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules promulgated pursuant to subsection (e) of this section.

(I) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of subsection (c) of this section, or in a multibeneficiary trust in accordance with paragraph (b)(2)(D) of this section, except as otherwise provided in this paragraph.

(II) If a certified reinsurer maintains a trust to fully secure its obligations subject to paragraph (b)(2)(D) of this section, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to paragraph (b)(2)(D) of this section. It shall be a condition to the grant of certification under this paragraph that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.
(III) The minimum trusteed surplus requirements provided in paragraph (b)(2)(D) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except that such trust shall maintain a minimum trusteed surplus of $10 million.

(IV) With respect to obligations incurred by a certified reinsurer under this paragraph, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer’s obligations will not be paid in full when due.

(V) For purposes of this paragraph, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations. If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended. As used in this paragraph, the term “terminated” refers to revocation, suspension, voluntary surrender, and inactive status.

(vi) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners’ accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction’s certification, and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(vii) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this paragraph, and the
commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(F) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (b)(2)(A), (B), (C), (D) or (E) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(G)(i) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by paragraphs (b)(2)(C) and (D) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(I) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(II) To designate the Secretary of State as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(ii) This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(H) If the assuming insurer does not meet the requirements of paragraph (b)(2)(A), (B) or (C), the credit permitted by paragraph (b)(2)(D) or (E) of this section shall
not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(i) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subparagraph (b)(2)(D)(iii) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(ii) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(iii) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets, or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(I) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer’s accreditation or certification.
(i) The commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner’s order on hearing, unless:

(I) The reinsurer waives its right to hearing;

(II) The commissioner’s order is based on regulatory action by the reinsurer’s domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer’s eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subparagraph (b)(2)(E)(vi) of this section; or

(III) The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner’s action.

(ii) While a reinsurer’s accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer’s obligations under the contract are secured in accordance with subsection (c) of this section. If a reinsurer’s accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer’s obligations under the contract are secured in accordance with subparagraph (b)(2)(E)(v) of this section or subsection (c) of this section.

(J) Concentration Risk.

(i) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds 50 percent of the domestic ceding insurer’s last reported surplus to policyholders, or
after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer’s gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) (1) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (b) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer; Provided, That the commissioner may adopt by rule pursuant to subdivision (e)(2) of this section specific additional requirements relating to or setting forth:

(A) The valuation of assets or reserve credits;

(B) The amount and forms of security supporting reinsurance arrangements described in subdivision (e)(2) of this section; and/or

(C) The circumstances pursuant to which credit will be reduced or eliminated.

(2) The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of
obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subdivision (d)(2) of this section. This security may be in the form of:

(A) Cash;

(B) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(C)(i) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subdivision (d)(1) of this section, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement;

(ii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(D) Any other form of security acceptable to the commissioner.

(d)(1) For purposes of paragraph (c)(2)(C) of this section, a “qualified United States financial institution” means an institution that:
(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(B) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) A “qualified United States financial institution” means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(A) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(B) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(e)(1) The commissioner may, to implement the provisions of this section, promulgate emergency rules and propose legislative rules for adoption by the Legislature pursuant to the provisions of §29A-3-1 et seq. of this code.

(2) The commissioner is further authorized to promulgate rules applicable to reinsurance arrangements as described in paragraph (e)(2)(A) of this section.
(A) A rule adopted pursuant to subdivision (e)(2) of this section may apply only to reinsurance relating to:

(i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(ii) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(iii) Variable annuities with guaranteed death or living benefits;

(iv) Long-term care insurance policies; or

(v) Such other life and health insurance and annuity products as to which the National Association of Insurance Commissioners adopts model regulatory requirements with respect to credit for reinsurance.

(B) A rule adopted pursuant to subparagraphs (e)(2)(A)(i) or (ii) of this section, may apply to any treaty containing:

(i) Policies issued on or after January 1, 2015; and/or

(ii) Policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

(C) A rule adopted pursuant to subdivision (e)(2) of this section may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules promulgated under this authority, to use the Valuation Manual adopted by the National Association of Insurance Commissioners under Section 11B(1) of the National Association of Insurance Commissioners’ Standard Valuation Law, including all amendments adopted by the National Association of Insurance Commissioners and in
effect on the date as of which the calculation is made, to the extent applicable.

(D) A rule adopted pursuant to this subdivision (e)(2) of this section shall not apply to cessions to an assuming insurer that:

(i) Is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the National Association of Insurance Commissioners’ Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or

(ii) Maintains at least $250 million in capital and surplus when determined in accordance with the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual, including all amendments thereto adopted by the National Association of Insurance Commissioners, excluding the impact of any permitted or prescribed practices; and is

(I) Licensed in at least 26 states; or

(II) Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(E) The authority to adopt rules pursuant to subdivision (e)(2) of this section does not limit the commissioner’s general authority to adopt rules pursuant to subdivision (e)(1) of this section.

(f) This section shall become effective on January 1, 2019, and shall apply to all cessions under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2019.
CHAPTER 132

(Com. Sub. for H. B. 4400 - By Delegates Westfall, Hartman, Criss, White, Lane, Walters, Upson, Frich, Capito and Shott)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to repeal §33-20F-6 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-20F-3, §33-20F-5, and §33-20F-9 of said code, all relating to the West Virginia Physicians Mutual Insurance Company; removing language that is no longer relevant to the operation of the company as a private mutual insurance company; and adding language to accommodate policies written to physicians outside the State of West Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-3. Definitions.

1 For purposes of this article, the term:

2 (a) “Board of medicine” means the West Virginia Board
3  of Medicine as provided in §30-3-5 of this code.

4 (b) “Board of Osteopathy” means the West Virginia
5  Board of Osteopathy as provided in §30-14-3 of this code.

6 (c) “Commissioner” means the Insurance
7  Commissioner of West Virginia as provided in §33-2-1 of
8  this code.
(d) “Company” means the Physicians’ Mutual Insurance Company created pursuant to the terms of this article.

(e) “Medical liability insurance” means, for the purposes of this article: All policies previously issued by the Board of Risk and Insurance Management pursuant to §29-12B-1 et seq. of this code which are transferred by the Board of Risk and Insurance Management to the company, pursuant to §33-20F-9(b) of this code and all policies of insurance subsequently issued by the company to physicians, physician corporations, physician-operated clinics, and such other individual health care providers as the commissioner may, upon written application of the company, approve.

(f) “Physician” means an individual who is licensed by the Board of Medicine or the Board of Osteopathy to practice medicine or podiatry in West Virginia, or who is licensed by a licensing board or body in another state to practice medicine or podiatry.

(g) “Transfer date” means the date on which the assets, obligations, and liabilities resulting from the Board of Risk and Insurance Management’s issuance of medical liability policies to physicians, physician corporations, and physician-operated clinics pursuant to §29-12B-1 et seq. of this code are transferred to the company.

§33-20F-5. Governance and organization.

(a) The Board of Risk and Insurance Management shall implement the initial formation and organization of the company as provided by this article.

(b) The company shall be governed by a board of directors consisting of 11 directors, as follows:

(1) Six directors who are physicians licensed to practice medicine in this state by the Board of Medicine or the Board of Osteopathy, including at least one general practitioner
and one specialist: Provided, That only physicians who have purchased medical professional liability coverage from the Board of Risk and Insurance Management are eligible to serve as physician representatives on the company’s first board of directors;

(2) Three directors who have substantial experience as an officer or employee of a company in the insurance industry;

(3) Two directors with general knowledge and experience in business management who are officers and employees of the company and are responsible for the daily management of the company;

(c) In addition to the eleven directors required by subsection (b) of this section, the bylaws of the company may provide for the election of at least two additional directors.

(d) The directors and officers of the company are to be chosen in accordance with the articles of incorporation and bylaws of the company. The initial board of directors selected in accordance with the provisions of subdivision (3), subsection (a) of this section shall serve for the following terms: (1) Three for four-year terms; (2) three for three-year terms; (3) three for two-year terms; and (4) two for one-year terms. Thereafter, the Directors shall serve staggered terms of four years. If an additional director is added to the board as provided in subsection (c) of this section, his or her initial term shall be for four years.

(e) The incorporators are to prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of this chapter and chapter thirty-one of this code.

§33-20F-6. Management and administration of the company.

[Repealed]
§33-20F-9. Kinds of coverage authorized; transfer of policies from the state Board of Risk and Insurance Management; risk management practices authorized.

(a) Upon approval by the commissioner for a license to transact insurance in this state, the company may issue nonassessable policies of malpractice insurance, as defined in §33-1-10 (e)(9) of this code, insuring a physician. Additionally, the company may issue other types of casualty or liability insurance as may be approved by the commissioner.

(b) On the transfer date:

(1) The company shall accept from the Board of Risk and Insurance Management the transfer of any and all medical liability insurance obligations and risks of existing or in-force contracts of insurance covering physicians, physician corporations, and physician-operated clinics issued by the board pursuant to §29-12B-1 et seq. of this code: Provided, That the company may decline or refuse to renew any and all such contracts of insurance transferred to the company from the Board of Risk and Insurance Management upon the expiration of the respective terms of each contract of insurance so transferred and nothing in this section is intended to or shall be construed to otherwise obligate the company to accept, underwrite or renew any contract of insurance whatsoever. The transfer shall not include medical liability insurance obligations and risks of existing or in-force contracts of insurance covering hospitals and nonphysician providers;

(2) The company shall assume all responsibility for and defend, indemnify, and hold harmless the Board of Risk and Insurance Management and the state with respect to any and all liabilities and duties arising from the assets and responsibilities transferred to the company pursuant to §29-12B-1 et seq. of this code;
(3) The Board of Risk and Insurance Management shall disburse and pay to the company any funds attributable to premiums paid for the insurance obligations transferred to the company pursuant to subdivision (1) of this subsection, with earnings thereon, less paid losses and expenses, and deposited in the Medical Liability Fund created by §29-12B-1 et seq. of this code as reflected on the ledgers of the Board of Risk and Insurance Management;

(4) The Board of Risk and Insurance Management shall disburse and pay to the company any funds in the Board of Risk and Insurance Management Physicians’ Mutual Insurance Company account created by §33-20F-7 of this code. All funds in this account shall be transferred pursuant to terms of a surplus note or other loan arrangement satisfactory to the Board of Risk and Insurance Management and the Insurance Commissioner.

(c) The Board of Risk and Insurance Management shall cause an independent actuarial study to be performed to determine the amount of all paid losses, expenses and assets associated with the policies the board has in force pursuant to §29-12B-1 et seq. of this code. The actuarial study shall determine the paid losses, expenses and assets associated with the policies to be transferred to the company pursuant to subsection (b) of this section and the paid losses, expenses and assets associated with those policies retained by the board. The determination shall not include liabilities created by issuance of new tail insurance policies for nonphysician providers authorized by §29-12B-6 (n) of this code.

(d) The Board of Risk and Insurance Management may enter into such agreements, including loan agreements, with the company that are necessary to accomplish the transfers addressed in this section.

(e) The company shall make policies of insurance available to physicians in this state, regardless of practice type or specialty. Policies issued by the company to each
class of physicians are to be essentially uniform in terms and conditions of coverage.

(f) Notwithstanding the provisions of subsection (b), (c) or (e) of this section, the company may:

(1) Establish reasonable classifications of physicians, insured activities, and exposures based on a good faith determination of relative exposures and hazards among classifications;

(2) Vary the limits, coverages, exclusions, conditions, and loss-sharing provisions among classifications;

(3) Establish, for an individual physician within a classification, reasonable variations in the terms of coverage, including rates, deductibles, and loss-sharing provisions, based on underwriting criteria established by the company, from time to time, which underwriting criteria may take into account factors considered by other medical malpractice insurance companies, from time to time, in underwriting similar risks and which factors may include, but are not limited to, the insured’s prior loss experience; current professional training and capability; disciplinary action taken against the physician by the Board of Medicine, Board of Osteopathy or a licensing board or body of another state in which the physician has been licensed; felonies or other criminal offenses committed by the physician; evidence of alcohol or chemical dependency or abuse; evidence of sexual misconduct; and any other factors relevant to the liability risk profile of the physician.

(4) Refuse to provide insurance coverage for individual physicians who do not meet underwriting criteria established by the company, from time to time, which underwriting criteria may take into account factors considered by other medical malpractice insurance companies, from time to time, in underwriting or declining to underwrite similar risks and which factors may include, but are not limited to, prior loss experience, current
professional training and capability, disciplinary action taken against the physician by the Board of Medicine, Board of Osteopathy or a licensing board or body of another state in which the physician has been licensed; felonies or other criminal offenses committed by the physician; evidence of alcohol or chemical dependency or abuse; evidence of sexual misconduct; and any other factors relevant to the liability risk profile of the physician and which do or may indicate that the physician represents an unacceptable risk of loss if coverage is provided.

(g) The company shall establish reasonable risk management and continuing education requirements which policyholders must meet in order to be and remain eligible for coverage.

CHAPTER 133

(Com. Sub. for S. B. 506 - By Senators Swope, Smith, Boso and Cline)

[Passed March 9, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §21-16-2, §21-16-3, and §21-16-5 of the Code of West Virginia, 1931, as amended, all relating to regulating persons who perform work on heating, ventilating, and cooling systems and fire dampers; providing definitions; creating new license for work on certain residential heating, ventilating, and cooling systems; renaming existing license; amending exemptions from license requirement; providing rule-making authority regarding licensure requirements, development of examination, and scope of work of certain persons who perform work on heating, ventilating, and cooling systems; and providing emergency rule-making authority.
Be it enacted by the Legislature of West Virginia:

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

(a) “Perform work on a heating, ventilating, and cooling system” means to install, maintain, alter, remodel, or repair one or more components of a heating, ventilating, and cooling system.

(b) “Heating, ventilating, and cooling system” means equipment to heat, cool, or ventilate residential or commercial structures, comprised of one or more of the following components:

(1) “Heating system” means a system in which heat is transmitted by radiation, conduction, or convection, or a combination of any of these methods, to the air, surrounding surfaces, or both, and includes a forced air system that uses air being moved by mechanical means to transmit heat, but does not include a fireplace or wood-burning stove not incorporated into or used as a primary heating system;

(2) “Ventilating system” means the natural or mechanical process of supplying air to, or removing air from, any space whether the air is conditioned or not conditioned, at a rate of airflow of more than 250 cubic feet per minute; and

(3) “Cooling system” means a system in which heat is removed from air, surrounding surfaces, or both, and includes an air-conditioning system.

(c) “HVAC Technician” means a person licensed to install, test, maintain, and repair both residential and nonresidential heating, ventilating and cooling systems.
(d) “HVAC Residential Technician” means a person licensed to install, test, maintain, and repair residential heating, ventilating, and cooling systems: Provided, That such persons may perform work on nonresidential heating, ventilating, and cooling systems subject to rules promulgated by the commissioner pursuant to §21-16-3 of this code.

(e) “Residential heating, ventilating, and cooling system” means a system of no more than four separate heating, ventilating, and cooling units each with a combined capacity of five tons – 130,000 BTUs for: (1) A single or dual family structure; or (2) a commercial location of no more than 5,000 square feet in size where no fire damper is required. Such term shall not apply to heating, ventilating, and cooling systems that include any packaged rooftop units.

(f) “HVAC technician in training” means a person with interest in and an aptitude for performing installation, maintenance, and repair work to a heating, ventilating, and cooling system as defined in this article, but who alone is not capable or authorized to perform heating, ventilating, and cooling system work unless directly supervised by a HVAC technician or an HVAC residential technician.

(g) “HVAC residential technician license” means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article to perform work as an HVAC residential technician.

(h) “HVAC technician license” means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article to perform work as an HVAC technician.

(i) “Routine maintenance” means work performed on a routine schedule that includes cleaning and/or replacing filters, greasing or lubricating motor bearings, adjusting and/or replacing belts, checking system temperature,
checking gas temperature, adjusting gas pressure as required, and checking voltage and amperage draw on heating, ventilating, and cooling systems.

(j) “Single family dwelling” means a building that is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

§21-16-3. License required; exemptions.

(a) On and after January 1, 2016, a person performing or offering to perform work on a heating, ventilating, and cooling system in this state shall have a license issued by the Commissioner of Labor, in accordance with the provisions of this article and the legislative rules promulgated pursuant hereto: Provided, That the commissioner shall issue HVAC residential technician licenses to qualified applicants without examination who present satisfactory evidence no later than December 31, 2019, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems: Provided, however, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination.

(b) A person licensed under this article shall carry a copy of the license on any job in which heating, ventilating, and cooling work is being performed.

(c) This article does not apply to:

(1) A person who personally performs work on a heating, ventilating, and cooling system in a single family dwelling owned by that person or by a member of that person’s immediate family;

(2) A person who performs work on a heating, ventilating, and cooling system at a manufacturing plant or other industrial establishment as an employee of the person, firm, or corporation operating the plant or establishment;
(3) A person who performs only electrical or plumbing work on a heating, ventilating, and cooling system, so long as the work is within the scope of practice which the person is otherwise licensed or authorized to perform; or

(4) A person who performs routine maintenance on any heating, ventilating, and cooling system.

§21-16-5. Rule-making authority.

(a) The Commissioner of Labor shall propose rules for legislative approval, in accordance with the provisions of §21-16-5 et seq. of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards and procedures for issuing and renewing licenses, applications, examinations, and qualifications;

(2) Provisions for the granting of HVAC technician licenses, without examination, to applicants who present satisfactory evidence no later than July 1, 2016, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems and at least 6,000 hours of experience and/or training in heating, ventilating, and cooling or related work, to include other sheet metal industry tasks: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Reciprocity provisions;

(4) Procedures for investigating complaints and revoking or suspending licenses, including appeal procedures;

(5) Fees for issuance and renewal of licenses and other costs necessary to administer the provisions of this article;

(6) Enforcement procedures; and
(7) Any other rules necessary to effectuate the purposes of this article.

(b) The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code for the purpose of describing:

(1) Provisions for the granting of HVAC residential technician licenses without examination to qualified applicants who present satisfactory evidence no later than December 31, 2019, of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(2) Provisions for developing an examination required to obtain an HVAC residential technician license commensurate with the scope of practice for HVAC residential technicians as described in §21-16-2(d) of this code: Provided, That applicants for such license examination must provide satisfactory evidence of having at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems: Provided, however, That the rules proposed by the commissioner shall provide that the HVAC residential license examination will be developed in consultation with HVAC industry representatives; and

(3) Provisions for allowing HVAC residential technicians to perform work on nonresidential heating, ventilating, and cooling systems subject to rules promulgated by the commissioner.
AN ACT to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, all relating to the Wage Payment and Collection Act; relating to allowing actual cash value of employer provided property to be deducted from an employee’s final paycheck if the property is not returned; setting forth conditions upon which an employer may withhold, deduct or divert the actual cash value of employer provided property that has not been timely returned; requiring written agreements before withholding or deductions for the actual cash value of employer provided property may be made; specifying certain contents of such written agreements; authorizing withholding, deduction or diversion of actual cash value of employer provided property with consent of employee; requiring employer to provide notice of intent to withhold, deduct or divert actual cash value of employer provided property; specifying contents of that notice; requiring employer to relinquish withheld wages if the employee provides the employer provided property by the deadline contained in the notice; providing exceptions; providing option to employee to object to actual cash value of employer provided property to be withheld, deducted or diverted; providing that employer place contested amounts in interest bearing escrow account; requiring employee to file civil action to recoup contested amounts within three months or contested amount in escrow account reverts to employer; providing that new subsection does not abolish or limit any
other remedies available to employers under law; exempting collective bargaining agreements; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION

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

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

(b) Whenever a person, firm or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee’s wages due for work that the employee performed prior to the separation of employment on or before the next regular payday on which the wages would otherwise be due and payable: Provided, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement. For purposes of this section, “business day” means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) Payment under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. If the employee requests that payment
(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

(f)(1) Notwithstanding any provision in this section to the contrary, if at the time of discharge or resignation, an employee fails to return employer provided property, as set forth by the parties under paragraph (C) of this subsection, the employer may withhold, deduct or divert an employee’s final wages, in an amount not to exceed the replacement cost of the employer provided property that was not returned as set forth under paragraph (C) of this subsection, to recover...
the replacement cost of the employer provided property, subject to the following:

(A) The employer provided property had been provided to the employee in the course of, and for use in, the employer’s business;

(B) The employer provided property has a value in excess of $100;

(C) The employee had signed a written agreement with the employer contemporaneous with the obtaining of the employer provided property, or signed and ratified an agreement if property had been provided prior to the effective date of this provision; and such agreement contained, at a minimum, the following information:

   (i) Specific itemization of the employer provided property, with a specified replacement cost;

   (ii) Clear statement that such items are to be returned immediately upon discharge or resignation; and

   (iii) Clear statement, coupled with the employee’s acknowledgement and agreement, that should the employee fail to timely return the specified items, the replacement cost of such items may be recovered by the employer from the employee’s final wages;

(D) The employer shall notify the employee in writing at the time of discharge or resignation by personal service, or as soon thereafter as practicable by personal service or via certified mail with return receipt requested, as to the replacement cost of the items and make a demand for return of such employer provided property within a certain date, not to exceed ten business days of the notification; and

(E) The employer shall relinquish the withheld, deducted or diverted wages to the employee if the employee returns the employer’s property, equipment, supplies and uniforms in a condition suitable for the age and usage of the
items within the deadline specified in paragraph (D) of this subsection: *Provided,* That uniforms returned to the employer within three years of their issuance shall be deemed acceptable in their current condition at the time of separation from employment for purposes of this section: *Provided further,* replacement tools are deemed to be the property of the employee and are not subject to the provisions of this section.

(2) Nothing herein precludes an employee from voluntarily consenting in writing to an employer’s withholding, deduction or diversion of a certain amount from the employee’s final wages in satisfaction of subsection (1) of this section.

(3) If an employee objects to the replacement cost amount to be deducted by an employer, and provides such written objection within the deadline specified in paragraph (D), subsection (1) of this subsection, then the employer shall place the controverted amount in an interest bearing escrow account: *Provided,* That if a civil action or equitable relief is not brought by the employee for the claimed amount within three months, the employee shall forfeit the amount in escrow and such money shall revert to the employer.

(4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any other remedies available to an employer to recover employer provided property, damages related to employer provided property or any other damages or relief, equitable or otherwise, available under any applicable law.

(5) Notwithstanding any provision in this section to the contrary, this provision shall not apply to employer-employee business relationships that are subject to, and governed by, collective bargaining agreements.

(6) For purposes of this section the following terms mean:
(A) The term “employer provided property” means all property provided by an employer to an employee for use in the employer’s business, including but not limited to, equipment, phone, computer, supplies or uniforms.

(B) The term “replacement cost” means actual cost paid by an employer for employer provided property, or for the same or similar property, if the original employer provided property no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts provided to the employer for such property.

(C) The term “replacement tools” means equipment, other than uniforms, provided by the employer to the employee for use in the course of the employer’s business and to replace equipment provided by the employee that is lost.

CHAPTER 135

(Com. Sub. for H. B. 2799 - By Delegates Foster, Higginbotham, Kessinger, Hill, Cowles, Fast, R. Miller and Isner)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §21-6-3 of the Code of West Virginia, 1931, as amended, all relating generally to the issuance of a minor’s work permit; prohibiting the superintendent of schools from requiring a physical examination to be included with the application for a minor’s work permit unless required by the prospective employer; and removing the requirement that the superintendent of schools certify that the minor personally appeared before him or her prior to the issuance, modification, or rejection of a work permit.
Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CHILD LABOR.

§21-6-3. Issuance of work permit.

(a) A child fourteen or fifteen years of age may be employed or permitted to work in any gainful occupation, except as provided in section two of this article, when the person, firm or corporation by whom the child is employed or permitted to work, obtains and keeps on file and accessible to officers charged with the enforcement of this article, a work permit issued by the superintendent of schools of the county in which the child resides, or by some person authorized by him or her in writing. Whenever a work permit has been issued, or wherever an age certificate has been issued under the provisions of section five of this article, it shall be conclusive as to the age of the child on whose behalf the work permit or age certificate was issued.

(b) The superintendent of schools, or person authorized by him or her in writing, shall issue the work permit only upon receipt of the following documents:

1. A written statement, signed by the person for whom the child expects to work, that he or she intends legally to employ the child;

2. A brief written description of the job the child is expected to perform;

3. A birth certificate, or attested transcript thereof, issued by the registrar of vital statistics or other officer charged with the duty of recording births;

4. A certificate signed by the principal or registrar of the school attended showing that the child is attending school; and

5. The written consent of the parent or parents, guardian or custodian of the child.
(c) The superintendent of schools may not require a physical examination to be included in the application for a work permit.

(d) The superintendent of schools is not required to certify that the minor personally appeared before him or her prior to the issuance, modification, or rejection of a work permit.

CHAPTER 136

(Com. Sub. for H. B. 4368 - By Delegates Westfall, Frich and Lane)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §21-5-3 of the Code of West Virginia, 1931, as amended, relating to voluntary assignments of wages by state employees who have been overpaid; and providing that state employees may voluntarily authorize an assignment or order of future wages to repay an overpayment, not to exceed a certain amount.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

(a) Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least twice every month and with no more than 19 days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized
deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made:

(1) In lawful money of the United States;

(2) By cash order as described and required in §21-5-4 of this code;

(3) By deposit or electronic transfer of immediately available funds into an employee’s payroll card account in a federally insured depository institution. The term “payroll card account” means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee’s wages, salary, commissions or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third person payroll processor, a depository institution or another person. “Payroll card” means a card, code or combination thereof or other means of access to an employee’s payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments. Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, form or corporation paying the compensation and the person being compensated; or

(4) By any method of depositing immediately available funds in an employee’s demand or time account in a bank, credit union or savings and loan institution that may be agreed upon in writing between the employee and such person, firm or corporation, which agreement shall specifically identify the employee, the financial institution, the type of account and the account number: Provided, That nothing herein contained shall be construed in a manner to
require any person, firm or corporation to pay employees by
depositing funds in a financial institution.

(c) If, at any time of payment, any employee is absent
from his or her regular place of labor and does not receive
his or her wages through a duly authorized representative,
he or she is entitled to payment at any time thereafter upon
demand upon the proper paymaster at the place where his or
her wages are usually paid and where the next pay is due.

d) Nothing herein contained may affect the right of an
employee to assign part of his or her claim against his or her
employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages may be
valid for a period exceeding one year from the date of the
assignment or order. An assignment or order shall be
acknowledged by the party making the same before a notary
public or other officer authorized to take acknowledgments,
and any order or assignment shall specify thereon the total
amount due and collectible by virtue of the same and, unless
otherwise provided for in subsection (f) of this section,
three-fourths of the periodical earnings or wages of the
assignor are all times exempt from such assignment or order
and no assignment or order is valid which does not so state
upon its face: Provided, That no such order or assignment is
valid unless the written acceptance of the employer of the
assignor to the making thereof is endorsed thereon: Provided, however, That nothing herein contained may be
construed as affecting the right of employer and employees
to agree between themselves as to deductions to be made
from the payroll of employees.

(f) If an employee of the state has been overpaid wages,
including incremental salary increases pursuant to §5-5-2 of
this code, an employee may voluntarily authorize a written
assignment or order for future wages to the state to repay
the overpayment in an amount not to exceed three-fourths
of his or her periodical earnings or wages.
CHAPTER 137

(Com. Sub. for H. B. 4401 - By Delegates Ambler, Sobonya, Westfall, Frich, Cooper, Foster, Householder, Barrett and Phillips)

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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; to amend and reenact §21-3D-8; to amend and reenact §21-5-5c; to amend and reenact §21-9-9; to amend and reenact §21-10-4; to amend and reenact §21-11-17; to amend and reenact §21-14-9; to amend and reenact §21-15-7; to amend and reenact §21-16-10; to amend and reenact §47-1-8, §47-1-20, §47-1-21 and §47-1-22; and to amend and reenact §47-1A-14, all relating to the collection and use of fees by the Commissioner of the Division of Labor; authorizing commissioner to utilize certain excess funds to meet the division’s funding obligations through June 30, 2019; eliminating authority to use certain excess funds after June 30, 2019; eliminating authority to charge annual registration fee for service persons and service agencies; eliminating authority to charge annual device registration fee; and eliminating certain rule-making authority.

Be it enacted by the Legislature of West Virginia:

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 §29A-3-1
et seq. 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019,
amounts collected may not 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 §29A-3-1 et seq. 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 §21-3C-10a of this code;

(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 §21-11-6 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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 §29A-3-1 et seq. 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 §21-5-5a, §21-5-5b, §21-5-5c and §21-5-5d of this code 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 §21-5-5a, §21-5-5b, §21-5-5c and §21-5-5d of this code.
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 §21-11-1 et seq. of this code, has paid the annual license fee under §21-11-8 of this code and has furnished bond or other assurance or fee under §21-9-10 of this code, 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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 §21-10-6 of this code.
(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 §21-10-6 of this code, 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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. Through June 30, 2019, 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: Provided, That beginning
July 1, 2019, amounts collected may not 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 §21-15-9 of this code.

(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 §21-15-9 of this code, 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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. Through
June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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: Provided, That upon the effective date of the amendments to this section adopted in the 2018 Regular Session of the Legislature, the division may not charge an annual registration fee.

(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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division’s funding obligations.

§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 §29A-1-1 et seq. 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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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 12 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 30 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: Provided, That upon the effective date of the amendments to this section adopted in the 2018 Regular Session of the Legislature, the division may not charge an annual device registration fee.

(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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not 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 §47-1-23(a) of this code.

(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. Through June 30, 2019, 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:
Provided, That beginning July 1, 2019, amounts collected
may not 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
§29A-5-1 et seq. of this code.

ARTICLE 1A. REGULATION AND CONTROL OF
BEDDING AND UPHOLSTERY BUSINESSES.

*§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.

*NOTE: This section was also amended by H. B. 4350 (Chapter 221),
which passed subsequent to the act.
(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. Through June 30, 2019, 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: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division’s funding obligations.

CHAPTER 138

[By Request of the West Virginia Fire Marshal]

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §21-6-2 of the Code of West Virginia, 1931, as amended, relating to clarifying when a minor between the ages of 16 and 18 may be employed by or elected as a member of a volunteer fire department to perform fire fighting functions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CHILD LABOR.
§21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; appeal to supreme court.

1. (a) A child under eighteen years of age may not be employed, permitted or suffered to work in, about, or in connection with any of the following occupations:

2. (1) Motor vehicle driver and outside helper whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivery of goods;

3. (2) The manufacture, storage, handling or transportation of explosives or highly flammable substances;

4. (3) Ore reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops, or in any other place in which the heating, melting or heat treatment of metals is carried on;

5. (4) Logging and saw milling occupations;

6. (5) Power-driven woodworking machine occupations;

7. (6) Occupations involving exposure to radioactive substances and ionizing radiations;

8. (7) Power-driven hoisting apparatus occupations;

9. (8) Power-driven metal-forming, punching, and shearing machine occupations;

10. (9) Mining, including coal mining;

11. (10) Occupations involving slaughtering, meat-packing, or processing or rendering;

12. (11) Power-driven bakery machines;

13. (12) Power-driven paper-products machine occupations;

14. (13) Occupations involved in the manufacturing of brick, tile, and kindred products;
(14) Occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears;

(15) Occupations involved in wrecking, demolition, and ship-breaking operations;

(16) Roofing operations above ground level; and

(17) Excavation operations.

(b) A child under eighteen years of age may not be employed or permitted to work in a bar, or be permitted, employed or suffered to sell, dispense or serve alcoholic beverages in any place or establishment where the consumption of alcoholic beverages is permitted by law.

(c) A child under eighteen years of age may not be employed or permitted to work in any occupation prohibited by law or determined by the commissioner to be dangerous or injurious: Provided, That a child between the ages of sixteen and eighteen years who is enrolled in, participating in, or has completed the minimum training requirements of the West Virginia State Fire Commission, West Virginia Department of Education Public Service Training, or West Virginia University fire service extension, or equivalent approved program, and who has the written consent of his or her parents or guardian may be employed by or elected as a member of a volunteer fire department to perform fire fighting functions: Provided, however, That no child may be permitted to operate any fire fighting vehicles, enter a burning building in the course of his or her employment or work or enter into any area determined by the fire chief or fireman in charge at the scene of a fire or other emergency to be an area of danger exposing the child to physical harm by reason of impending collapse of a building or explosion, unless the child is under the immediate supervision of a fire line officer.
AN ACT to amend and reenact §8A-3-3 of the Code of West Virginia, 1931, as amended, relating to authorizing counties and municipalities to establish a joint airport hazard comprehensive plan for the purpose of satisfying requirements of federal aviation law, protecting the public safety, and preventing hazardous conditions; describing requirements for written agreements; requiring submission of a plan and public hearing; providing for modifications to written agreements; and providing just compensation for diminution of property value.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. COMPREHENSIVE PLAN.

§8A-3-3. Authority for planning commission.

(a) A planning commission shall prepare a comprehensive plan for the development of land within its jurisdiction. A planning commission shall then recommend the comprehensive plan to the appropriate governing body for adoption.

(b) A county, multicounty, regional or joint comprehensive plan may include the planning of towns, villages or municipalities to the extent to which, in the planning commission’s judgment, they are related to the planning of the unincorporated territory of the county as a
whole: *Provided,* That the comprehensive plan shall not be considered a comprehensive plan for any town, village or municipality without the consent of the planning commission and/or the governing body of the town, village or municipality.

(c) A comprehensive plan should be coordinated with the plans of the Department of Transportation, insofar as it relates to highways, thoroughfares, trails, and pedestrian ways under the jurisdiction of that planning commission.

(d) A county planning commission may prepare a comprehensive plan for either the entire county or a part of the county.

(e) A multicounty, regional or joint planning commission may prepare a comprehensive plan for land within its jurisdiction.

(f) Counties and municipalities may by written agreement establish a joint airport hazard comprehensive plan for the purpose of satisfying requirements of federal aviation law, protecting the public safety, and preventing hazardous conditions. The joint written agreement shall set forth the boundaries of the airport overlay district and any requirements that would apply within the district, without the need for the adoption of a full comprehensive plan within a municipality or county. The joint agreement becomes effective once each entity takes the appropriate steps, including submission to a planning commission and public hearing, for the establishment or modification of a full or comprehensive plan within its jurisdiction. Any modifications to the written agreement made by one entity must be adopted by the other entity or entities for the agreement to become valid: *Provided,* That where the provisions of any such agreement result in a diminution in property value to a property owner, the governing authority responsible shall provide just compensation: *Provided, however,* That any joint written agreement affecting a regional airport shall require the approval of the regional airport’s governing body to be effective.
AN ACT to amend and reenact §64-2-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Department of Administration to promulgate a legislative rule relating to parking; and authorizing the Department of Administration to promulgate a legislative rule relating to state-owned vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

(a) The legislative rule filed in the State Register on July 25, 2017, authorized under the authority of §5A-10-3a of this code, relating to the Department of Administration (parking, 148 CSR 6), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2017, authorized under the authority of §5A-3-48 of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2017, relating to the Department of Administration (state-owned vehicles, 148 CSR 3), is authorized with the amendments set forth below:
On page 5, subsection 7.4, after the word “as”, by inserting the words “well as”;

On page 5, subdivision 7.4.b, by striking out the words “or replacement” and inserting in lieu thereof the words “to or replacement of a state-owned vehicle”;

On page 6, subsection 8.4, after the words “otherwise exchange information. The use of” by inserting the word “a”;

On page 6, subsection 8.5, by striking out the word “regulations” and inserting in lieu thereof the word “rules”;

On page 7, subsection 9.2, after the words “Subsection 9.1.”, by adding the words “of this section”;

On page 7, subdivision 9.3.c, by striking out the words “bases where the” and inserting in lieu thereof the words “basis where the location requiring the”;

On page 7, subdivision 9.3.e, by striking out the word “lien” and inserting in lieu thereof the word “liens”;

On page 7, subdivision 9.4, by striking out “9.3.b. or 9.3.c.” and inserting in lieu thereof the words “subdivision 9.3.b or subdivision 9.3.c of this subsection”;

On page 9, subdivision 11.2.f, by striking out the word “state”;

On page 10, subdivision 11.2.j, by striking out the word “state-owned”;

On page 10, subdivision 11.2.k, by striking out the word “state-owned”;

On page 10, subdivision 11.2.1, by striking out the word “state-owned”;
AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating generally to authorizing the Department of Environmental Protection to promulgate certain legislative rules as filed, as modified, and as amended and to repeal certain legislative and procedural rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to underground storage tanks; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to West Virginia surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from municipal solid waste
landfills; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from hazardous waste treatment, storage, and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment; directing the Department of Environmental Protection to repeal a legislative rule relating to state construction grants program rule; and directing the Department of Environmental Protection to repeal a procedural rule relating to Freedom of Information Act requests.

Be it enacted by the Legislature of West Virginia:

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

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

(a) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-18-6 of this code, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2017, authorized under the authority of §22-17-6 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee, and refiled in the State Register on December 4, 2017, relating to the Department of Environmental Protection (underground storage tanks, 33 CSR 30), is authorized.
(c) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §22-3-13 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 22, 2018, relating to the Department of Environmental Protection (West Virginia surface mining reclamation, 38 CSR 2), is authorized with the following amendments:

On page 147, by striking out all of paragraph 12.2.a.4. and inserting in lieu thereof a new paragraph 12.2.a.4. to read as follows:

12.2.a.4. Notwithstanding any other provisions of this rule to the contrary, the Secretary will not release or reduce the bond if, at the time, water discharged from or affected by the operation requires chemical or passive treatment in order to comply with applicable effluent limitations standards. Permit-approved measures taken during operations to prevent the formation of acid drainage shall not be considered passive treatment: Provided, That the Secretary may approve a request for release if the applicant demonstrates to the satisfaction of the Secretary that either:

And,

On page 148, by striking out all of subparagraph 12.2.a.4.B. and inserting in lieu thereof a new subparagraph 12.2.a.4.B. to read as follows:

12.2.a.4.B. The operator has provided irrevocable financial assurances in a form satisfactory to the Secretary through a contract or other mechanism enforceable under provisions of law, such as delineated in subsection 11.3 of this rule, adequate to provide for long term treatment of the drainage as required by the federal Clean Water Act at 33 U.S.C 1251 et seq., the West Virginia Water Pollution Control Act at §22-11-1 et seq. of this code and the operator’s National Pollutant Discharge Elimination
49 System permit issued under 47 CSR 30. Default on a
treatment obligation under this paragraph will subject the
operator to penalties and sanctions, including permit
blocking.

In order to make this demonstration, the applicant shall
address, at a minimum, the current and projected quantity
and quality of drainage to be treated, the anticipated
duration of treatment, the estimated capital and operating
cost of the treatment facility, and the calculations that
demonstrate the adequacy of the remaining bond or other
financial assurance.

(d) The legislative rule filed in the State Register on July
21, 2017, authorized under the authority of §22-5-4 of this
code, relating to the Department of Environmental
Protection (standards of performance for new stationary
sources, 45 CSR 16), is authorized.

(e) The legislative rule filed in the State Register on July
21, 2017, authorized under the authority of §22-5-4 of this
code, modified by the Department of Environmental
Protection to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register
on August 24, 2017, relating to the Department of
Environmental Protection (control of air pollution from
combustion of solid waste, 45 CSR 18), is authorized.

(f) The legislative rule filed in the State Register on July
21, 2017, authorized under the authority of §22-5-4 of this
code, relating to the Department of Environmental
Protection (control of air pollution from municipal solid
waste landfills, 45 CSR 23), is authorized.

(g) The legislative rule filed in the State Register on July
21, 2017, authorized under the authority of §22-5-4 of this
code, relating to the Department of Environmental
Protection (ambient air quality standards, 45 CSR 8), is
authorized.
(h) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage, and disposal facilities, 45 CSR 25), is authorized.

(i) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(j) The legislative rule filed in the State Register on July 11, 2017, authorized under the authority of §22-22-3 of this code, relating to the Department of Environmental Protection (voluntary remediation and redevelopment, 60 CSR 3), is authorized with the following amendment:

On page 53, by striking out all of subdivision 15.7.b. and inserting in lieu thereof a new subdivision 15.7.b. to read as follows:

15.7.b. Public Notice of Application for the Voluntary Remediation Program. – The applicant shall produce and circulate a public notice of its application to the Voluntary Remediation program in accordance with subsection 7.1 of this rule, which shall also include the following:

15.7.b.1. A summary of the proposed future use of the site; and

15.7.b.2. A summary of the public’s right under the Act to become involved in the development and remediation and reuse of the site, as well as the time, date, and location of an informational meeting the applicant will hold with regard to the application.

(k) The legislative rule effective on May 7, 1999, authorized under the authority of §22C-2-6 of this code, relating to the Department of Environmental Protection
(state construction grants program rule, 47 CSR 33), is repealed.

(l) The procedural rule effective on July 30, 2010, authorized under the authority of §29A-3-3 of this code, relating to the Department of Environmental Protection (Freedom of Information Act requests, 60 CSR 2), is repealed.

CHAPTER 142

(Com. Sub. for S. B. 165 - By Senator Maynard)

[Passed February 19, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §64-5-1 and §64-5-2 of the Code of West Virginia, 1931, as amended, relating generally to authorizing various health agencies to promulgate certain legislative rules as filed, modified, and amended by the Legislature; authorizing various health agencies to repeal certain legislative rules; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to development of methodologies to examine needs for substance use disorder treatment facilities within the state; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to collection and
exchange of data related to overdoses; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care centers licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to family child care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to informal and relative family child care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to out-of-school-time child care center licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pilot program for drug screening of applicants for cash assistance; directing the Department of Health and Human Resources to repeal a legislative rule relating to regulation of opioid treatment programs; authorizing the Health Care Authority to promulgate a legislative rule relating to financial disclosure; and repealing a Health Care Authority legislative rule relating to certificate of need.

Be it enacted by the Legislature of West Virginia:

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

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §16-5B-8 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 30, 2017, relating to the Department of Health and Human Resources (hospital licensure, 64 CSR 12), is authorized.
(b) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §16-1-9a of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2017, relating to the Department of Health and Human Resources (public water systems, 64 CSR 3), is authorized with the following amendment:

On page six, by striking out all of subdivision 8.1. and inserting in lieu thereof a new subdivision 8.1., to read as follows:

8.1. A public water system which artificially adjusts fluoride levels shall strive to maintain those levels between 0.6 milligrams per liter and 0.8 milligrams per liter. The optimum target concentration for artificially adjusted fluoride is 0.7 milligrams per liter. If the drinking water of a public water system is found to be outside of the 0.6 to 0.8 milligrams per liter range, the public water system shall make any treatment or operational changes necessary to return the fluoride level to within the range within 24 hours of receiving the analytical result unless doing so is impracticable, in which case, the correction shall be made as soon as possible. A public water system shall identify in its annual report to the Bureau the date and time of each instance where the fluoride levels were found to be outside the target range and how long it took to implement responsive adjustments.

(c) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §16-4C-6 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2017, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized.
(d) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §16-49-9 of this code, relating to the Department of Health and Human Resources (West Virginia clearance for access: registry and employment screening, 69 CSR 10), is authorized with the following amendment:

On page five, by striking out all of subdivision 7.3.a. and inserting in lieu thereof a new subdivision 7.3.a., to read as follows:

7.3.a. The passage of time. The length of time an applicant is barred from employment in direct access care starts from the date of conviction or the date of release from the penalty imposed, whichever is later.

(e) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §16-53-3 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2017, relating to the Department of Health and Human Resources (development of methodologies to examine needs for substance use disorder treatment facilities within the state, 69 CSR 13), is authorized with the following amendments:

On page two, subdivision 2.6, by striking out the word “six” and inserting in lieu thereof the word “seven”;

On page two, in subdivision 2.6.c, by striking out “Roane,”;

On page two, in subdivision 2.6.e, by striking out “Kanawha,” and “Clay,”;

On page two, in subdivision 2.6.f, by striking out “Fayette,” and “Nicholas,”; and
On page two, following subdivision 2.6.f, creating a new subdivision by inserting the following: “2.6.g. Region 7: Clay, Fayette, Kanawha, Nicholas, and Roane counties.”.

(f) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §16-5T-5 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2017, relating to the Department of Health and Human Resources (collection and exchange of data related to overdoses, 69 CSR 14), is authorized.

(g) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2017, relating to the Department of Health and Human Resources (child care centers licensing, 78 CSR 1), is authorized.

(h) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2017, relating to the Department of Health and Human Resources (family child care facility licensing requirements, 78 CSR 18), is authorized.

(i) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §49-2-121 of this code, relating to the Department of Health and Human Resources (family child care home registration requirements, 78 CSR 19), is authorized.

(j) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2017, relating to the Department of Health and Human Resources (collection and exchange of data related to overdoses, 69 CSR 14), is authorized.
Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2017, relating to the Department of Health and Human Resources (informal and relative family child care home registration requirements, 78 CSR 20), is authorized.

(k) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §49-2-121 of this code, relating to the Department of Health and Human Resources (out-of-school-time child care center licensing requirements, 78 CSR 21), is authorized.

(l) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §9-3-6 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2017, relating to the Department of Health and Human Resources (pilot program for drug screening of applicants for cash assistance, 78 CSR 26), is authorized.

(m) The legislative rule effective on October 10, 2013, authorized under the authority of §16-1-4 of this code, relating to the Department of Health and Human Resources (regulation of opioid treatment programs, 69 CSR 7), is repealed.


(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §16-29B-8 of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2017, relating to the Health Care Authority (financial disclosure, 65 CSR 13), is authorized with the following amendment:

On page nine, by inserting a new section seven to read as follows:

The provisions of this rule do not apply to the legally authorized practice of medicine by any one or more persons in the private office of any healthcare provider.

(b) The legislative rule effective on April 13, 2011, authorized under the authority of §16-2D-3 of this code, relating to the Health Care Authority (certificate of need rule, 65 CSR 7), is repealed.

AN ACT to amend and reenact §64-6-1, §64-6-2, and §64-6-3 of the Code of West Virginia, 1931, as amended, all relating generally to the Department of Military Affairs and Public Safety; authorizing and directing certain agencies to promulgate certain legislative rules as filed and as modified and repealing an obsolete rule; authorizing the State Fire Commission to promulgate a legislative rule relating to hazardous substance emergency response training programs; directing the State Fire Marshal to promulgate a legislative rule relating to electrician licensing; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to protocol for law-enforcement response to domestic violence; and repealing a Governor’s Committee on Crime, Delinquency
and Correction rule relating to motor vehicle stop data collection standards for the study of racial profiling.

Be it enacted by the Legislature of West Virginia:

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

§64-6-1. Fire Commission.

The legislative rule filed in the State Register on July 25, 2017, authorized under the authority of §29-3-5a of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2017, relating to the State Fire Commission (hazardous substance emergency response training programs, 87 CSR 3), is authorized.

§64-6-2. State Fire Marshal.

The Legislature directs the State Fire Marshal, pursuant to the authority given to the division in §29-3B-5 of this code, to promulgate the legislative rule filed in the State Register by the State Fire Marshal on January 26, 2018, relating to the State Fire Marshal (electrician licensing rules, 103 CSR 5).

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

(a) The legislative rule filed in the State Register on October 20, 2017, authorized under the authority of §30-29-3 of this code, modified by the Governor’s Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2017, relating to the Governor’s Committee on Crime, Delinquency and Correction (law-enforcement training and certification standards, 149 CSR 2), is authorized.
(b) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §48-27-1102 of this code, modified by the Governor’s Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2017, relating to the Governor’s Committee on Crime, Delinquency and Correction (protocol for law-enforcement response to domestic violence, 149 CSR 3), is authorized with the following amendment:

On page 13, section 6.4.9(e), by striking through the words “As a general rule, do” and inserting in lieu thereof the words “It is recommended to”

And,

On page 13, section 6.4.10, by inserting after the word “children” the words “the following is recommended”

(c) The legislative rule effective on May 10, 2006, authorized under the authority of §17G-2-3 of this code, relating to the Governor’s Committee on Crime, Delinquency and Correction (motor vehicle stop data collection standards for the study of racial profiling, 149 CSR 5), is repealed.

CHAPTER 144

(Com. Sub. for S. B. 184 - By Senator Maynard)

[Passed February 16, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §64-8-1 of the Code of West Virginia, 1931, as amended, relating generally to authorizing
and directing the Division of Highways to promulgate certain legislative rules as filed, as modified, and as amended, and repealing a rule; authorizing the Division of Highways to promulgate a legislative rule relating to the disposal, lease, and management of real property and appurtenant structures, and relocation assistance; directing the Division of Highways to promulgate a legislative rule relating to employment procedures; and repealing the Division of Highways legislative rule relating to waste tire remediation/environmental clean-up.

Be it enacted by the Legislature of West Virginia:

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

§64-8-1. Division of Highways.

(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §17-2A-19 of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2017, relating to the Division of Highways (disposal, lease, and management of real property and appurtenant structures and relocation assistance, 157 CSR 2), is authorized with the following amendments:

On page 7, subsection 8.1, after the word “conditions”, by adding “unless longer lease terms have been approved by the Commissioner for utility accommodation leases.”; and

On page 8, subsection 8.4, after the word “conditions”, by adding “unless longer lease terms have been approved by the Commissioner for utility accommodation leases.”

(b) The Legislature directs the Division of Highways, pursuant to the authority given to the division in §17-2A-24 of this code, to promulgate the legislative rule filed in the State Register by the division on January 22, 2018, relating
to the division (employment procedures, 157 CSR 12) with
the following amendments:

On page 2, by striking out all of subsection 2.8;
And,
By renumbering the remaining subsections.

(c) The legislative rule effective on May 4, 2001,
authorized under the authority of §17-23-2 of this code,
relating to the Division of Highways (waste tire
remediation/environmental clean-up, 157 CSR 8), is
repealed.

CHAPTER 145

(Com. Sub. for S. B. 230 - By Senator Maynard)

[Passed March 10, 2018; in effect from passage.]
[Approved by the Governor on March 21, 2018.]
Be it enacted by the Legislature of West Virginia:

ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §20-1A-1 of this code, relating to the Division of Natural Resources (controlling the public land corporation’s sale, lease, exchange, or transfer of land or minerals, 58 CSR 2), is authorized.
(b) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §20-1-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 18, 2017, relating to the Division of Natural Resources (hunting, fishing, and other outfitters and guides, 58 CSR 11), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (general hunting, 58 CSR 49), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (special migratory game bird hunting, 58 CSR 56), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (miscellaneous permits and licenses, 58 CSR 64), is authorized.

§64-10-2. Division of Labor.

(a) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §21-15-6 of this code, relating to the Division of Labor (Zipline and Canopy Tour Responsibility Act, 42 CSR 10), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §47-1A-15 of this code, relating to the Division of Labor (bedding and upholstered furniture, 42 CSR 12), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §21-10-3 of this code, relating to the Division of Labor (Amusement Rides
(d) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §21-3C-11 of this code, relating to the Division of Labor (Elevator Safety Act, 42 CSR 21), is authorized, with the amendments set forth below:

On page 5, subsection 8 to read as follows:

8.1. The fee for an inspection of an elevator by a Division inspector shall be $100.00.

8.2. The Division’s fee for the inspection of more than one elevator in a building is $100.00 for the first elevator inspected and $25.00 for each additional elevator inspected.

8.3. If changes or repairs are required prior to the issuance of a certificate of operation, the Division shall not charge an inspection fee for the first follow-up inspection.

8.4. If subsequent follow-up inspections are required because of the owner’s or operator’s failure to make the required repairs or changes, the Division’s inspection fees shall be the same rates as set forth in subsections 8.1 and 8.2 of this rule for each subsequent follow-up inspection.

8.5. If an owner or operator fails to pay the required inspection fee, the Commissioner shall withhold the issuance of a certificate of operation until the fee is paid.

(e) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §21-5-13 of this code, relating to the Division of Labor (employer wage bonds, 42 CSR 33), is authorized.
(f) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §47-1-3 of this code, relating to the Division of Labor (registration of service persons and service agencies, 42 CSR 35), is authorized, with the amendments set forth below:

On page one, subsection 1.1 to read as follows:

1.1. Scope. – This rule governs the voluntary registration of service persons and service agencies, and the issuance of certificates of registration.

On page one, subsection 3.2 to read as follows:

3.2. “Certificate of registration” means the document issued by the Division of Labor upon receipt of a complete application from a service person or service agency.

On page four, subsection 6.1. to read as follows:

6.1. A service person desiring to register with the Division shall submit a written application requesting that he or she be registered, and shall provide all information as the Commissioner may require on a form supplied by the Division, and shall include the documentation required in section 7 of this rule.

On page four, subsection 6.2. to read as follows:

6.2. A service agency desiring to register with the Division shall submit a written application requesting that the agency be registered, and shall provide all information as the Commissioner may require on a form supplied by the Division, including the documentation required in section 7 of this rule, and a sample security seal required in section 8 of this rule.

On page four, striking subsection 6.3. in its entirety, and renumbering the remaining subsections.

And,
On page five, striking section 7 in its entirety, and
renumbering the remaining sections.

(g) The legislative rule filed in the State Register on July
27, 2017, authorized under the authority of §47-1-3 of this
code, modified by the Division of Labor to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on December 8,
2017, relating to the Division of Labor (registration of
weighing and measuring devices used by businesses in
commercial transactions, 42 CSR 36), is authorized, with
the amendments set forth below:

On page 1, subsection 1.1. to read as follows:

1.1.Scope. — This rule governs the registration of
weighing and measuring devices used by businesses in
commercial transactions, and the issuance of certificates of
device registration.

On page 1, subsection 3.1., striking the words “and
payment of the required fee for each weighing or measuring
device used in commercial transactions”.

On page 2, subsection 5.1., striking the words “and shall
pay the applicable registration fee as prescribed in section 6
of this rule”.

On page 2, striking subsection 5.3. in its entirety, and
renumbering the remaining subsections.

On page 2, striking section 6 in its entirety, and
renumbering the remaining section.

On page 3, striking Appendix A in its entirety.

And,

On page 4, striking Appendix B in its entirety.

The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §22A-2A-308 of this code, relating to the Office of Miners’ Health, Safety, and Training (operating diesel equipment in underground mines in West Virginia, 56 CSR 23), is authorized.

§64-10-4. Division of Energy.

The legislative rule effective on July 1, 2010, authorized under the authority of §5B-2A-12 of this code, relating to the Division of Energy (community development assessment and real property valuation procedures for office of coalfield community development, 207 CSR 1), is repealed.

CHAPTER 146
(Com. Sub. for S. B. 237 - By Senator Maynard)

[Passed February 26, 2018; in effect from passage.]
[Approved by the Governor on March 6, 2018.]

AN ACT to amend and reenact §64-7-1, §64-7-2, and §64-7-3 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing and directing certain agencies within the Department of Revenue to promulgate certain legislative rules as filed, modified, and amended; relating to authorizing the State Tax Department to promulgate a legislative rule relating to farm-to-food bank tax credit; removing value-added products related to the farm-to-food bank tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to payment of taxes by electronic funds transfer; authorizing the State Tax Department to promulgate a legislative rule relating to property transfer tax;
authorizing the State Tax Department to promulgate a legislative rule relating to municipal sales and service and use tax administration; directing the State Tax Department to promulgate a legislative rule relating to a personnel rule for the Tax Division; authorizing the Lottery Commission to promulgate a legislative rule relating to state lottery rules; and authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing.

Be it enacted by the Legislature of West Virginia:

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

§64-7-1. State Tax Department.

(a) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §11-13DD-5 of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2017, relating to the State Tax Department (farm-to-food bank tax credit, 110 CSR 13DD), is authorized, with the following amendment set forth below:

On page two, by striking out all of subsection 2.10; and, on page two, by striking out all of subdivision 4.1.e.

(b) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §11-10-5t of this code, relating to the State Tax Department (payment of taxes by electronic funds transfer, 110 CSR 10F), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §11-22-5 of this code, relating to the State Tax Department (property transfer tax, 110 CSR 22), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §11-10-11c of
this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 8, 2017, relating to the State Tax Department (municipal sales and service and use tax administration, 110 CSR 28), is authorized.

(e) The Legislature directs the State Tax Department, pursuant to the authority given to the department in §11B-1-8 of this code, to promulgate the legislative rule filed in the State Register by the department on January 12, 2018, relating to the State Tax Department (personnel rule for the Tax Division, 110 CSR 42), is authorized, with the amendment set forth below:

On page 23, subsection 12.2, after the word “manner.” by inserting the following: “The Tax Commissioner shall comply with West Virginia and federal law prohibiting nepotism, favoritism, discrimination or unethical practices related to employment and promotion, and the public employee grievance system.”

§64-7-2. Lottery Commission.

The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §29-22-5 of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2017, relating to the Lottery Commission (state lottery rules, 179 CSR 1), is authorized.

§64-7-3. Racing Commission.

The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §19-23-6 and §19-23-8 of this code, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized with the amendments set forth below:

On page 39, subdivision 24.1.f., to read as follows:
The fees that shall be paid to the Racing Commission for occupational permits issued effective for calendar year 2012 and thereafter are set forth in table 178-1A at the end of this rule.

And,

That Table 178-1A read as follows:

**TABLE 178-1 A**

**OCCUPATIONAL PERMIT FEES**

*(Effective for calendar year 2012 and thereafter)*

<table>
<thead>
<tr>
<th>Stable Name</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation</td>
<td>$40.00</td>
</tr>
<tr>
<td>Vendor</td>
<td>$40.00</td>
</tr>
<tr>
<td>Owner (with registration of colors)</td>
<td>$30.00</td>
</tr>
<tr>
<td>Owner-Trainer (same person)</td>
<td>$60.00</td>
</tr>
<tr>
<td>Trainer</td>
<td>$30.00</td>
</tr>
<tr>
<td>Assistant Trainer</td>
<td>$30.00</td>
</tr>
<tr>
<td>Jockey</td>
<td>$30.00</td>
</tr>
<tr>
<td>Apprentice Jockey</td>
<td>$20.00</td>
</tr>
<tr>
<td>Jockey Agent</td>
<td>$20.00</td>
</tr>
<tr>
<td>Practicing Veterinarian</td>
<td>$30.00</td>
</tr>
<tr>
<td>Veterinarian’s Assistant</td>
<td>$20.00</td>
</tr>
<tr>
<td>Blacksmith</td>
<td>$30.00</td>
</tr>
<tr>
<td>Occupation</td>
<td>Fee</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Authorized Agent (must apply for permit and pay permit fee for each person represented)</td>
<td>$20.00</td>
</tr>
<tr>
<td>Mutuel Employee</td>
<td>$20.00</td>
</tr>
<tr>
<td>Photographers, totalisator, film patrol</td>
<td>$20.00</td>
</tr>
<tr>
<td>Stable Foreman</td>
<td>$20.00</td>
</tr>
<tr>
<td>Starter</td>
<td>$30.00</td>
</tr>
<tr>
<td>Assistant Starter</td>
<td>$20.00</td>
</tr>
<tr>
<td>Association Racing Secretary</td>
<td>$30.00</td>
</tr>
<tr>
<td>Association Assistant Racing Secretary</td>
<td>$30.00</td>
</tr>
<tr>
<td>Paddock Judge</td>
<td>$20.00</td>
</tr>
</tbody>
</table>

**TABLE 178-1 A**

*continued*

**OCCUPATIONAL PERMIT FEES**

*(Effective for calendar year 2012 and thereafter)*

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horsemen’s Bookkeeper</td>
<td>$20.00</td>
</tr>
<tr>
<td>Clerk of Scales</td>
<td>$20.00</td>
</tr>
<tr>
<td>Clocker</td>
<td>$20.00</td>
</tr>
<tr>
<td>Timer</td>
<td>$20.00</td>
</tr>
<tr>
<td>Role</td>
<td>Fee</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Horse Identifier</td>
<td>$20.00</td>
</tr>
<tr>
<td>Jockey Room Custodian</td>
<td>$20.00</td>
</tr>
<tr>
<td>Placing Judge</td>
<td>$20.00</td>
</tr>
<tr>
<td>Outrider</td>
<td>$20.00</td>
</tr>
<tr>
<td>Stable Hand</td>
<td>$20.00</td>
</tr>
<tr>
<td>Concession</td>
<td>$20.00</td>
</tr>
<tr>
<td>Maintenance</td>
<td>$20.00</td>
</tr>
<tr>
<td>Groom</td>
<td>$20.00</td>
</tr>
<tr>
<td>Admission</td>
<td>$20.00</td>
</tr>
<tr>
<td>Pony Riders</td>
<td>$20.00</td>
</tr>
<tr>
<td>Parking</td>
<td>$20.00</td>
</tr>
<tr>
<td>Security</td>
<td>$20.00</td>
</tr>
<tr>
<td>Exercise Rider</td>
<td>$20.00</td>
</tr>
<tr>
<td>Video Lottery employees</td>
<td>$20.00</td>
</tr>
<tr>
<td>Others not specified</td>
<td>$20.00</td>
</tr>
</tbody>
</table>
AN ACT to amend and reenact §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, §64-9-11, §64-9-12, §64-9-13, §64-9-14, §64-9-15, and §64-9-16 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by various executive or administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; repealing certain legislative rules; authorizing the Board of Accountancy to promulgate a legislative rule relating to board rules and rules of professional conduct; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to noxious weeds; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to inspection of meat
and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia apiary law; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to inspection of nontraditional, domesticated animals; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to schedule of charges for inspection services; fruit; authorizing the Athletic Commission to promulgate a legislative rule relating to administrative rules of the West Virginia State Athletic Commission; authorizing the Athletic Commission to promulgate a legislative rule relating to regulation of mixed martial arts; authorizing the Board of Licensed Dieticians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the Board of Hearing Aid Dealers to promulgate a legislative rule relating to rules governing the West Virginia Board of Hearing Aid Dealers; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures, continuing education and physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatric physicians; directing the Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures: physicians; podiatrists; authorizing the Board of Optometry to promulgate a legislative rule relating to rules of the West Virginia Board of Optometry; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to pharmacist recovery networks; authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists and pharmacy interns; authorizing the Board of Pharmacy to promulgate a legislative rule relating to centralized prescription processing; authorizing the Board of Pharmacy to promulgate a legislative rule relating to uniform controlled substances act; authorizing the Board of Pharmacy to
promulgate a legislative rule relating to registration of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the controlled substances monitoring program; authorizing the Board of Psychologists to promulgate a legislative rule relating to fees; authorizing the Board of Psychologists to promulgate a legislative rule relating to requirements for licensure as a psychologist and/or a school psychologist; authorizing the Board of Psychologists to promulgate a legislative rule relating to code of conduct; authorizing the Board of Real Estate Appraiser Licensing and Certification to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Commission to promulgate a legislative rule relating to licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business; authorizing the Real Estate Commission to promulgate a legislative rule relating to schedule of fees; authorizing the Real Estate Commission to promulgate a legislative rule relating to requirements for real estate courses, course providers and instructors; directing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies, standards and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; repealing a Division of Rehabilitation Services rule relating to case services; repealing a Division of Rehabilitation Services rule relating to a resources manual; authorizing the Secretary of State to promulgate a legislative rule relating to procedures for canvassing elections; authorizing the Secretary of State to promulgate a legislative rule relating to procedures for handling ballots and counting write-in votes in counties using optical scan ballots; authorizing the Secretary of State to promulgate a legislative rule relating to vote by mail pilot project phase 2: Voting by Mail; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to organization and operation and licensing of veterinarians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to schedule of fees.
Be it enacted by the Legislature of West Virginia:

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

§64-9-1. Board of Accountancy.

The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-9-5 of this code, modified by the Board of Accountancy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2017, relating to the Board of Accountancy (board rules and rules of professional conduct, 1 CSR 1), is authorized.


(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §19-9-2 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2017, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §19-2C-3(a) of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2017, relating to the Commissioner of Agriculture (auctioneers, 61 CSR 11B), is authorized with the following amendment:

On page one, subsection 4.1, by striking out “ten thousand dollars ($10,000)” and inserting in lieu thereof “twenty-five thousand dollars ($25,000)”.

(c) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §19-12D-4 of
this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2017, relating to the Commissioner of Agriculture (noxious weeds, 61 CSR 14A), is authorized.

(d) The legislative rule filed in the State Register on July 17, 2017, authorized under the authority of §19-2B-3 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 18, 2017, relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

(e) The legislative rule filed in the State Register on July 18, 2017, authorized under the authority of §19-13-3 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 18, 2017, relating to the Commissioner of Agriculture (West Virginia apiary law, 61 CSR 2), is authorized.

(f) The legislative rule filed in the State Register on July 17, 2017, authorized under the authority of §19-29-4 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2017, relating to the Commissioner of Agriculture (inspection of nontraditional, domesticated animals, 61 CSR 23D), is authorized.

(g) The legislative rule filed in the State Register on December 1, 2017, authorized under the authority of §19-2-5 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2017, relating to the Commissioner of Agriculture (schedule of charges for inspection services: fruit, 61 CSR 8B), is authorized.

(a) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2017, relating to the Athletic Commission (administrative rules of the West Virginia State Athletic Commission, 177 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2017, relating to the Athletic Commission (regulation of mixed martial arts, 177 CSR 2), is authorized.

§64-9-4. Board of Licensed Dietitians.

The legislative rule filed in the State Register on July 24, 2017, authorized under the authority of §30-35-4 of this code, modified by the Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2017, relating to the Board of Licensed Dietitians (licensure and renewal requirements, 31 CSR 1), is authorized with the following amendments:

On page two, subsection 6.3, following the words “provisional permit renewal fee” by striking the words “as stated in 4.1.2.3.” and inserting in lieu thereof the words “$50.”;

On page three, subsection 7.5, following the words “professional license reinstatement fee” by striking the words “as stated in 4.1.2.5.” and inserting in lieu thereof the words “as stated in paragraph 4.1.2.3. of this rule”;
On page three, paragraph 8.1.1.3, following the words “professional license reinstatement fee” by striking the words “as stated in 4.1.2.5.” and inserting in lieu thereof the words “as stated in paragraph 4.1.2.3. of this rule”;

On page three, subdivision 8.1.2, by renumbering the incorrectly numbered subsections of that section to 8.1.2.1, 8.1.2.2, and 8.1.2.3, respectively;

And,

On page three, in the incorrectly numbered section 8.1.1.3, following the words “reinstatement fee as stated” by striking the words “in 4.1.2.5.” and inserting in lieu thereof the words “in paragraph 4.1.2.3. of this rule.”

§64-9-5. Board of Hearing Aid Dealers.

The legislative rule filed in the State Register on July 26, 2017, authorized under the authority of §30-26-3 of this code, relating to the Board of Hearing Aid Dealers (rules governing the West Virginia Board of Hearing Aid Dealers, 8 CSR 1), is authorized.

§64-9-6. Board of Medicine.

The legislative rule filed in the State Register on August 29, 2017, authorized under the authority of §30-3E-3 of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 6, 2017, relating to the Board of Medicine (licensure, disciplinary and complaint procedures, continuing education, physician assistants, 11 CSR 1B), is authorized.

The legislative rule filed in the State Register on July 26, 2017, authorized under the authority of §30-3-7 of this code, relating to the Board of Medicine (continuing education for physicians and podiatric physicians, 11 CSR 6), is authorized with the amendment set forth below:
On page one, subsection 1.2 by striking out the words, “§30-3-12 and §30-1-7a” and inserting in lieu thereof “§30-3-7”.

(c) The Legislature directs the Board of Medicine, pursuant to the authority given to the board in §30-3-7 of this code, to promulgate the legislative rule filed in the State Register by the Board on June 5, 2017, relating to the Board (licensing and disciplinary procedures: physicians; podiatrists, 11 CSR 1A) with the following amendment:

On page 18, by striking out all of paragraph 12.1.ii.B. and re-lettering the remaining paragraphs.

§64-9-7. Board of Optometry.

The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-8-6 of this code, relating to the Board of Optometry (rules of the West Virginia Board of Optometry, 14 CSR 1), is authorized.


The legislative rule filed in the State Register on October 17, 2017, authorized under the authority of §30-3E-3 of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 6, 2017, relating to the Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 2), is authorized.


(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-5-7 of this code, relating to the Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 1), is authorized with the following amendments:
On page fifteen, subdivision 6.5.1 after the words, “submit a fee of” by striking out “$125)” and inserting in lieu thereof “$250”.

(b) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2017, relating to the Board of Pharmacy (pharmacist recovery networks, 15 CSR 10), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2017, relating to the Board of Pharmacy (immunizations administered by pharmacists and pharmacy interns, 15 CSR 12), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 18, 2017, relating to the Board of Pharmacy (centralized prescription processing, 15 CSR 14), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §60A-3-301 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2017, relating to the Board of Pharmacy (uniform controlled substances act, 15 CSR 2), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the
objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 18, 2017, relating to the Board of Pharmacy (registration of pharmacy technicians, 15 CSR 7), is authorized.

(g) The legislative rule filed in the State Register on September 19, 2017, authorized under the authority of §60A-9-6 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2017, relating to the Board of Pharmacy (controlled substances monitoring program, 15 CSR 8), is authorized.


(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2017, relating to the Board of Psychologists (fees, 17 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2017, relating to the Board of Examiners of Psychologists (requirements for licensure as a psychologist and/or a school psychologist, 17 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-21-6 of this code, relating to the Board of Examiners of Psychologists (code of conduct, 17 CSR 6), is authorized.

The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §30-38-9 of this code, relating to the Real Estate Appraiser Licensing and Certification Board (requirements for licensure and certification, 190 CSR 2), is authorized.

§64-9-12. Real Estate Commission.

(a) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 6, 2017, relating to the Real Estate Commission (licensing real estate brokers, associate brokers and salespersons and the conduct of brokerage business, 174 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §30-40-8 of this code, relating to the Real Estate Commission (schedule of fees, 174 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §30-40-8 of this code, modified by the Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 6, 2017, relating to the Real Estate Commission (requirements for real estate courses, course providers and instructors, 174 CSR 3), is authorized with the amendment set forth below:

On page six, by striking out all of subsection 3.9. and inserting in lieu thereof a new subsection 3.9. to read as follows:

3.9. All approved pre-license and continuing education instructors shall complete annual instructor development workshops when offered by the Commission, unless the attendance is waived by the Commission or the individual is an out-of-state instructor who a) is approved by the
The Legislature directs the Board of Examiners of Registered Professional Nurses, pursuant to the authority given to the Board in §30-7-4 of this code, to promulgate the legislative rule filed in the State Register by the Board on July 9, 2009, relating to the Board (policies, standards and criteria for the evaluation and accreditation of colleges, departments or schools of nursing, 19 CSR 1), with the following amendments:

On page three, by striking out all of subdivision 4.1.b. and renumbering the remaining subdivisions;

On page six, by striking out all of subsection 8.3. and renumbering the remaining subsections;

And,

On page nine, by striking out all of subsection 13.3 and renumbering the remaining subsections.

(a) The legislative rule effective on May 1, 2007, authorized under the authority of §18-10A-1 of this code, relating to the Division of Rehabilitation Services (case services, 130 CSR 1), is repealed.

(b) The legislative rule effective on May 1, 2007, authorized under the authority of §18-10A-1 of this code, relating to the Division of Rehabilitation Services (resources manual, 130 CSR 2), is repealed.

(a) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §3-1A-6 of this
code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 12, 2017, relating to the Secretary of State (procedures for canvassing elections, 153 CSR 18), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 12, 2017, relating to the Secretary of State (procedures for handling ballots and counting write-in votes in counties using optical scan ballots, 153 CSR 27), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2017, authorized under the authority of §3-3A-3 of this code, relating to the Secretary of State (vote by mail pilot project phase 2: voting by mail, 153 CSR 39), is authorized.

§64-9-16. Board of Veterinary Medicine.

(a) The legislative rule filed in the State Register on July 18, 2017, authorized under the authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 29, 2017, relating to the Board of Veterinary Medicine (organization and operation and licensing of veterinarians, 26 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 18, 2017, authorized under the authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 20, 2017, relating to the Board of Veterinary Medicine (certified animal euthanasia technicians, 26 CSR 5), is authorized with the following amendments:
On page two, after subdivision 2.1.e., by adding the following new subdivisions:

2.1.f. Verification of the status of the applicant’s certification in each state or jurisdiction where he or she currently holds or ever held a certificate;

2.1.g. Verification that the applicant has never been denied a certification in another state or jurisdiction, had his or her certification restricted, suspended or revoked or been disciplined in any manner;”

And,

By renumbering the remaining subdivisions.

(c) The legislative rule filed in the State Register on July 18, 2017, authorized under the authority of §30-10-6 of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 29, 2017, relating to the Board of Veterinary Medicine (schedule of fees, 26 CSR 6), is authorized.

CHAPTER 148

(Com. Sub. for H. B. 2890 - By Delegates Lovejoy, Sobonya, C. Romine, Rohrbach, Hornbuckle, Canestraro, Thompson, Hicks, Isner and C. Miller)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §10-1-24, relating to establishing a Library Facilities Improvement Fund that will serve to support library facilities construction,
maintenance and improvement projects; setting forth general structure of fund and distribution of funds; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC LIBRARIES.


(a) There is created in the State Treasury a special fund known as the “Library Facilities Fund”. Expenditures from the fund shall be for the purposes set forth in this section. The fund shall be administered by the West Virginia Library Commission.

(b) The fund shall consist of moneys received from the following sources:

(1) All appropriations made by the Legislature to the fund;

(2) Any moneys available from sources outside the West Virginia Library Commission;

(3) Repayment of loans made by the West Virginia Library Commission pursuant to this section; and

(4) All interest and other income earned from investment of moneys in the fund.

(c) The West Virginia Library Commission shall utilize moneys in the fund to support public library facilities construction, renovation, maintenance and improvement projects. The West Virginia Library Commission shall evaluate potential recipient projects of funds from the fund on a competitive basis.

(1) The West Virginia Library Commission may provide loans to public libraries to support energy savings and critical maintenance projects with moneys in the fund.
(2) With the exception of loans made under this section, the West Virginia Library Commission may not expend any money from the fund toward a particular project unless the proposed expenditure is matched on a dollar-for-dollar basis by other sources.

(d) The West Virginia Library Commission shall propose a rule for legislative approval in accordance with §29A-3-1 et seq. of this code to implement the provisions of this section. The rule shall contain at least the following:

(1) A process for submitting and reviewing proposals;

(2) The content of proposals;

(3) Criteria for evaluating proposals; and

(4) Other provisions the West Virginia Library Commission considers necessary to administer the program in accordance with this section.

(e) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year will not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(f) In a given year, the West Virginia Library Commission may not allocate an amount in excess of four percent of the balance of the fund on December 31st of the immediately preceding calendar year for administrative expenses.

(g) The West Virginia Library Commission may invest any or all of the balance of the fund with the state’s Consolidated Investment Fund.
CHAPTER 149


[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2018.]

AN ACT to amend and reenact §22C-9-3 and §22C-9-4 of the Code of West Virginia, 1931, as amended, to amend and reenact §37-7-2 of said code; and to amend said code by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, §37B-2-1, §37B-2-2, §37B-2-3, §37B-2-4, §37B-2-5, §37B-2-6, §37B-2-7, §37B-2-8, and §37B-2-9, all relating generally to real property; providing the Oil and Gas Conservation Commission enforcement authority for certain mineral development by cotenants; providing an exception to waste and trespass for certain oil or natural gas developments; providing a short title; providing declarations of public policy and legislative findings; providing definitions; providing that, in cases where there are seven or more royalty owners, consent for the lawful use and development of oil or natural gas mineral property by the persons owning an undivided three fourths of the royalty interests, as defined, in an oil or natural gas mineral property is permissible, is not waste, and is not trespass; providing that nonconsenting cotenants may elect a production royalty interest or a working interest share of production; providing an election period and default elections; providing a certain right of appeal; providing that interests owned by unknown or unlocatable owners be reserved, reported, and deposited in a fund administered by the State Treasurer; providing methods for determination of leasehold and contractual
terms; providing for the development of specifically targeted stratigraphic formations; providing the Oil and Gas Conservation Commission rule-making authority; providing a mechanism for surface owners to acquire title to certain severed oil and gas interests; providing limitations of liability for certain nonconsenting cotenants and unknown or unlocatable interest owners; prohibiting surface use or disturbance in certain circumstances; preserving common law rights; providing for severability of provisions; providing a short title; providing that the article shall be read in conjunction and not in conflict with the West Virginia Uniform Unclaimed Property Act; providing definitions; providing for quarterly reporting and remittance of each reserved interest for each unknown or unlocatable interest owner to the State Treasurer; providing reporting requirements and administrative duties; creating a fund known as the Unknown and Unlocatable Interest Owners Fund, to be administered by the State Treasurer; permitting investment of moneys in the fund with the West Virginia Board of Treasury Investments; requiring payment of lawful claims of unknown and unlocatable interest owners; permitting deduction of certain expenses; requiring that certain funds be transferred to the Oil and Gas Reclamation Fund and the Public Employees Insurance Agency Stability Fund in equal amounts; providing for certain notice requirements; providing for the crediting of certain amounts to each owner’s account and payment of certain interest earned; providing for rule-making authority; providing for severability of provisions; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-3. Application of article; exclusions.
(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of §22-6-1 et seq. of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than those utilized in secondary recovery programs as set forth in §22C-9-8 of this code and those provided for in §22C-9-4 of this code;

(2) Any well commenced or completed prior to March 9, 1972, unless such well is, after completion (whether such completion is prior or subsequent to that date):

(A) Deepened subsequent to that date to a formation at or below the top of the uppermost member of the “Onondaga Group”; or

(B) Involved in secondary recovery operations for oil under an order of the commission entered pursuant to §22C-9-8 of this code;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to grant to the commissioner or the commission authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in §22C-9-7(a)(6) of this code; or
(2) Fix prices of oil or gas.

(d) Nothing contained in either this chapter or §22-1-1 et seq. may be construed so as to require, prior to commencement of plugging operations, a lessee under a lease covering a well to give or sell the well to any person owning an interest in the well, including, but not limited to, a respective lessor, or agent of the lessor, nor shall the lessee be required to grant to a person owning an interest in the well, including, but not limited to, a respective lessor, or agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation of the well.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

(a) The “oil and gas conservation commission” shall be composed of five members. The director of the Department of Environmental Protection and the chief of the office of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the Department of Environmental Protection. Of the three members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the federal energy regulatory commission. The third appointee shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as commissioner and as chair of the commission.
(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the Governor shall serve until the member's successor has been appointed and qualified. Members may be appointed by the Governor to serve any number of terms. The members of the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and such appointment shall be made by the Governor within 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. A commission member's appointment shall be terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within 30 days of the termination.

(c) The commission shall meet at such times and places as shall be designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the chief of the office of oil and gas. Notification of each meeting shall be given in writing to each member by the chair at least 14 calendar days in advance of the meeting. Three members of the commission, at least two of whom are appointed members, shall constitute a quorum for the transaction of any business.

(d) The commission shall pay each member the same compensation 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 and shall reimburse each member for actual
and necessary expenses incurred in the discharge of official
duties.

(e) The commission is hereby empowered and it is the
commission’s duty to execute and carry out, administer and
enforce the provisions of this article in the manner provided
herein. Subject to the provisions of §22C-9-3 of this code,
the commission has jurisdiction and authority over all
persons and property necessary therefor. The commission is
authorized to make such investigation of records and
facilities as the commission deems proper. In the event of a
conflict between the duty to prevent waste and the duty to
protect correlative rights, the commission’s duty to prevent
waste shall be paramount.

(f) Without limiting the commission’s general authority,
the commission shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and orders
reasonably necessary to prevent waste, protect correlative
rights, govern the practice and procedure before the
commission and otherwise administer the provisions of this
article;

(3) Issue subpoenas for the attendance of witnesses and
subpoenas duces tecum for the production of any books,
records, maps, charts, diagrams and other pertinent
documents, and administer oaths and affirmations to such
witnesses, whenever, in the judgment of the commission, it
is necessary to do so for the effective discharge of the
commission’s duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to
the Legislature, its members and committees, to the chief of
office of oil and gas, to the Department of Environmental
Protection and to any other agency of state government having responsibility related to the oil and gas industry.

(g) The commission may delegate to the commission staff the authority to approve or deny an application for new well permits, to establish drilling units or special field rules if:

1. The application conforms to the rules of the commission; and
2. No request for hearing has been received.

(h) The commission may not delegate its authority to:

1. Propose legislative rules;
2. Approve or deny an application for new well permits, to establish drilling units or special field rules if the conditions set forth in subsection (g) of this section are not met; or
3. Approve or deny an application for the pooling of interests within a drilling unit.

(i) Any exception to the field rules or the spacing of wells which does not conform to the rules of the commission, and any application for the pooling of interests within a drilling unit, must be presented to and heard before the commission.

(j) The commission is hereby empowered and it is the commission’s duty to execute and carry out, administer, and enforce the relevant provisions of §37B-1-1 et seq. of this code concerning mineral development by cotenants for all wells at all depths. The commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper.
CHAPTER 37. REAL PROPERTY.

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant.

If a tenant in common, joint tenant, or parcener commits waste, he or she is liable to his or her cotenants, jointly or severally, for damages. The lawful use or development of oil or natural gas and their constituents in compliance with the provisions of §37B-1-1 et seq. of this code is not the commission of waste.

CHAPTER 37B. MINERAL DEVELOPMENT.

ARTICLE 1. MINERAL DEVELOPMENT BY A MAJORITY OF COTENANTS.

§37B-1-1. Short title.

This article shall be known as the Cotenancy Modernization and Majority Protection Act.

§37B-1-2. Declaration of public policy; legislative findings.

It is declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage and promote exploration for and development, production, and conservation of oil, natural gas and their constituents;

(2) Prohibit waste of oil, natural gas, and their constituents and unnecessary surface loss of oil, natural gas, and their constituents;

(3) Encourage the maximum recovery of oil, natural gas, and their constituents;

(4) Safeguard, protect and enforce the correlative rights of operators and mineral owners in that each such operator and mineral owner may obtain his or her just and equitable share of production;
(5) Safeguard, protect and enforce the integrity of the passive royalty owner’s interest in his or her minerals.

(6) Safeguard, protect and enforce the rights of surface owners; and

(7) Protect and enforce the clear provisions of contracts lawfully made.

§37B-1-3. Definitions.

As used in this article:

“Consenting Cotenant” means a tenant in common, joint tenant, or parcener having an interest in the mineral property who consents in writing to a lawful use of the mineral property through a bona fide lease made in an arms-length transaction.

“Nonconsenting Cotenant” means an owner who for any reason chooses not to consent to a lawful use of the mineral property agreed to by the consenting cotenants owning, cumulatively, at least an undivided three-fourths interest in and to the mineral property.

“Operator” means any owner of at least an undivided three-fourths interest of the right to develop, operate and produce oil, natural gas, or their constituents, and to appropriate the oil, natural gas, or their constituents produced therefrom.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof.

“Post-production expense” means an expense or cost subsequent to production including, but not limited to, an expense or cost related to severance taxes, pipelines, surface
facilities, telemetry, gathering, dehydration, transportation, fractionation, compression, manufacturing, processing, treating or marketing of oil or natural gas and their constituents.

“Prorata share” means the allocation of revenues and costs attributable to the lawful use of a mineral property that is calculated based on the proportion that the net acreage of such ownership interest bears to the total net acreage in the mineral property, in a development or production unit that includes, all or part of, that mineral property.

“Royalty owner” means any owner in place of oil or natural gas and their constituents, owners of oil or natural gas leasing rights, and owners vested with any leasehold estate less than 25 percent of the total, to the extent that the owners are not an operator as defined in this section. A royalty owner does not include a person whose interest is limited to: (A) A working interest in a wellbore only; (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive mineral interests; or (E) net profit interests.

“Unknown or unlocatable interest owner” means a person vested with a present ownership interest in the oil or natural gas and their constituents in place in a mineral property whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission, the sheriff, the assessor, and the clerk of the circuit court in the county or counties in which the interest is located, and includes unknown heirs, successors and assigns known to be alive;

(B) A reasonable inquiry in the vicinity of the owner’s last known place of residence;

(C) A diligent inquiry into known interest owners in the same tract; and
§37B-1-4. Lawful use and development by cotenants; election of interests; reporting and remitting of interests of unknown or unlocatable cotenants; establishment of terms and provisions for development; and merging of surface and oil and gas.

(a) In cases where there are seven or more royalty owners, if an operator or owner makes or has made reasonable efforts to negotiate with all royalty owners in an oil or natural gas mineral property and royalty owners vested with at least three fourths of the right to develop, operate, and produce oil, natural gas, or their constituents consent to the lawful use or development of the oil or natural gas mineral property, the operator’s or owner’s use or development of the oil or natural gas mineral property is permissible, is not waste, and is not trespass. In that case, the consenting cotenants and their lessees, operators, agents, contractors or assigns are not liable for damages for waste or trespass due to the lawful use or development and shall pay the nonconsenting cotenants in accordance with subsections (b) and (c) of this section, reserve the amounts specified in subsection (d) of this section for the benefit of unknown or unlocatable interest owners, and report and remit the reserved interests as provided in subsection (d) of this section.

(b) A nonconsenting cotenant is entitled to receive, based on his or her election, either:

(1) A prorata share of production royalty, paid on the gross proceeds received at the first point of sale to an unaffiliated third-party purchaser and free of post-production expenses, equal to the highest royalty percentage paid to his or her consenting cotenants in the same mineral property, under a bona fide, arms-length lease transaction and lease bonus and delay rental payments or other non-
royalty mineral payments, calculated on a weighted-average net mineral acre basis; or

(2) To participate in the development and receive his or her prorata share of the revenue and cost equal to his or her share of production attributable to the tract or tracts being developed according to the interest of such nonconsenting cotenant, exclusive of any royalty or overriding royalty reserved in any lease, assignments thereof or agreements relating thereto, after the market value of such nonconsenting cotenant’s share of production, exclusive of such royalty and overriding royalty, equals double the share of such costs payable or charged to the interest of such nonconsenting cotenant.

(c) A nonconsenting cotenant shall have 45 days following the operator’s written delivery of its best and final lease offer in which to make his or her election for either a production royalty or a revenue share as specified in subsection (b) of this section. If the nonconsenting cotenant fails to deliver a written election to the operator prior to the expiration of such 45-day period, he or she shall be deemed to have made the election set forth in subdivision (1), subsection (b) of this section. Within thirty days after a nonconsenting cotenant has chosen or is deemed to have chosen the production royalty option, the nonconsenting cotenant shall have the right to appeal to the Commission regarding the issue of whether there has been compliance with subdivision (1) of subsection (b) of this section, to verify the highest royalty paid in the same mineral property and the value for the lease bonus and delay rental payments: Provided, however, That the operations upon the parcel may continue during the proceedings.

(d) Unknown or unlocatable interest owners are deemed to have made the election provided by subdivision (1), subsection (b) of this section and are only entitled to receive the amount provided by that subdivision. Within 120 days from the date upon which an amount is reserved for an unknown or unlocatable interest owner pursuant to
subsection (a) of this section, the consenting cotenants and their lessees, operators, agents, contractors or assigns shall make a report to the State Treasurer as the Unclaimed Property administrator and each calendar quarter, thereafter, concerning each reserved interest for each unknown or unlocatable interest owner and shall concurrently remit the amount reserved, in accordance with the provisions of §37B-2-1 et seq. and §36-8-1 et seq. of this code and as determined by the State Treasurer. The quarterly report and remittances shall be submitted by the first day of the month following each calendar quarter.

(e) Unless otherwise agreed to in writing or defined by this section, any nonconsenting cotenant and any unknown or unlocatable interest owner who elects or is deemed to elect a production royalty under subdivision (1), subsection (b) of this section is subject to and shall benefit from the other terms and provisions defined by the lease executed by a consenting cotenant which contains terms and provisions most favorable to the nonconsenting cotenant or the unknown or unlocatable interest owner: Provided, That nonconsenting cotenants and unknown or unlocatable interest owners shall not be subject to or liable under any warranty of title, jurisdictional or choice of law provisions, arbitration provisions, injection well provisions, disposal well provisions, and storage provisions: Provided further, That consenting cotenants and their lessees, operators, agents, contractors or assigns shall only develop the specifically targeted stratigraphic formation and 100 feet above and below said formation; nonconsenting cotenants and unknown or unlocatable interest owners will retain all rights to all other formations unless or until reasonable efforts are made to renegotiate under this section for each additional formation. If a consenting cotenant has made a lease only for the targeted formation, in that case the nonconsenting cotenants and unknown and unlocatable cotenants shall receive the highest royalty, bonus and delay rental in the lease which was executed for the targeted formation.
(f) Unless otherwise agreed to in writing or defined by this section, a nonconsenting cotenant who elects to participate under subdivision (2), subsection (b), of this section, shall be subject to and shall benefit from other terms and provisions determined to be just and reasonable by the Oil and Gas Conservation Commission in a manner similar to the provisions of §22C-9-7(b)(5)(B) of this code governing deep wells. The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, to implement and make effective the provisions of this section and the powers and authority conferred and the duties imposed upon the commission under the provisions of this section. Notwithstanding the determination of participation terms by the commission, an operator may proceed with the development of oil, natural gas, or their constituents pursuant to this section.

(g) After seven (7) years from the date of the first report to the Treasurer, a bonafide surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the oil and natural gas estate underlying the surface tract. To the extent relevant and practical, such action shall follow the provisions of W.Va. Code §55-12A-1 et seq. Upon presentation of sufficient proof, a bonafide surface owner shall be entitled to receive a special commissioner’s deed transferring title to the interest of any or all unknown or unlocatable interest owners in an oil and natural gas estate which underlies the surface tract. The surface owner shall only be entitled to their proportionate share of all future proceeds and is not entitled to any of the accrued funds which have been remitted to the Treasurer prior to the execution of the special commissioner’s deed. The unknown or unlocatable interest owners are not entitled to any amounts paid to the grantees of the special commissioner’s deed after delivery of said deed.
§37B-1-5. Limitations of liability for certain cotenants.

1. Nonconsenting cotenants who elect to receive a production royalty pursuant to §37B-1-4(b)(1) of this code and unknown or unlocatable interest owners shall have no liability for bodily injury, property damage, warranty of title, or environmental claims, arising out of site preparation, mineral extraction, maintenance, reclamation, and other operations with respect to minerals produced from the cotenant’s property, except nonconsenting cotenants and unknown or unlocatable interest owners are liable for their intentional acts.

§37B-1-6. Surface use.

1. (a) When any tract of mineral property where an interest in the oil or natural gas in place is owned by a nonconsenting cotenant is used or developed pursuant to §37B-1-4 of this code, in no event shall drilling be initiated upon, or other surface disturbance occur, without the surface owner’s consent regardless of whether such surface owner possesses any actual ownership in the mineral interest: Provided, That this subsection shall not require surface owner consent for tracts on which surface disturbance does not occur or tracts otherwise subject to an existing surface use agreement, oil and gas lease which includes surface use rights, or other valid contractual arrangement in which the owner has granted rights to the operator to use the surface for horizontal drilling or any other use for which this article is used.

2. (b) Except as specifically described in subsection (a) of this section, nothing contained in this chapter is intended to alter in any way, and this chapter shall not diminish or increase, the rights of the owners of the surface overlying the minerals developed in this state. Except as specifically described in subsection (a) of this section, in enacting this chapter in 2018, it is the intention of the Legislature to leave unchanged the common law of this state as it relates to the
mineral owner’s right to utilize the surface for the extraction of minerals.

§37B-1-7. 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.

ARTICLE 2. UNKNOWN AND UNLOCATABLE INTEREST OWNERS ACT.

§37B-2-1. Short title.

This article shall be known and may be cited as the “Unknown and Unlocatable Interest Owners Act.”

§37B-2-2. Relationship between unknown and unlocatable interest provisions and unclaimed property provisions.

The provisions of this article shall be read in conjunction and not in conflict with the provisions of the West Virginia Uniform Unclaimed Property Act in §36-8-1 et seq. of this code.


Terms used in this article shall have the meanings as provided in §36-8-1 et seq. and §37B-1-1 et seq. of this code. In addition, as used in this article:

“Reserved interests” means all amounts payable for the use, development, extraction, production or sale of minerals due for an unknown or unlocatable interest owner. The term includes amounts payable:

(i) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;
(ii) For the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(iii) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement.


(a) The holder shall make a report to the administrator each calendar quarter concerning each reserved interest for each unknown or unlocatable interest owner and shall concurrently remit the amount reserved to the administrator. The quarterly report and remittances shall be submitted by the first day of the month following each calendar quarter.

(b) The report shall contain:

1. A full legal description of the real property interest and any other information that identifies the interest, including without limitation, division orders;

2. If known, the name, last known address, and social security number or taxpayer identification number of the unknown or unlocatable interest owner or apparent owner;

3. The date or dates on which the reserved interest became payable with respect to the property; and

4. All other information the administrator by rule prescribes as necessary for the administration of this article.

(c) Before the date for filing the report, the holder of the reserved interests may request the administrator extend the time for filing the report. The administrator may grant the extension for good cause.

(d) The holder is not liable to any person for the wrongful use or appropriation of personal information of
interest owners by another person described in the reports required under this section.

(e) With respect to all unknown or unlocatable interest owners, all obligations under this chapter of the holder are satisfied once an adequate report is filed and reserved interests are remitted to the administrator.

§37B-2-5. Unknown and unlocatable interest owners fund; duties of the State Treasurer.

(a) The Unknown and Unlocatable Interest Owners Fund is created in the State Treasury as a special revenue and interest-bearing account to be administered by the State Treasurer for the purposes prescribed in this article.

(b) The administrator shall deposit all moneys received pursuant to §37B-1-1 et seq. and §37B-2-1 et seq. of this code into the fund. All expenditures from the fund shall be in accordance with this article and as otherwise determined by the Legislature.

(c) The administrator may invest the moneys in the fund with the West Virginia Board of Treasury Investments. All earnings shall accrue to the fund and are available for expenditure in accordance with this article.

(d) The administrator shall pay all lawful claims of unknown and unlocatable interest owners from the fund.

(e) The administrator may deduct the following expenses from the fund:

(1) Expenses incurred identifying, locating, and returning the property to owners, including without limitation the costs of mailing, publication, and real estate title investigations within this state and in other jurisdictions;

(2) Reasonable service charges; and
(3) Expenses incurred in examining the reports of the holder and in collecting the reserved interest from the holders.

(f) After deducting the claims paid and the expenses specified in subsection (e) of this section and maintaining a sum of money which the administrator estimates will be needed to pay claims and expenses duly allowed from the reserved interests received and deposited in the fund, the administrator shall determine the amount that is transferrable from the Fund. Beginning July 1, 2023, and every six months thereafter, the administrator shall transfer 50 percent of the amount the administrator determines is transferrable to the Oil And Gas Reclamation Fund established under §22-6-29 of this code and expended for the purposes provided by that section and §22-10-6 of this code, and 50 percent of the revenue shall be deposited into the Public Employees Insurance Agency Stability Fund and expended pursuant to §11B-2-32 of this code.

(g) At least sixty days prior to the seven year anniversary of the first report to the administrator concerning the property of an unknown or unlocatable interest owner, the administrator shall publish a notice in a newspaper of general circulation in each county of this state where the minerals are located once a week for two successive weeks as provided by the West Virginia Rules of Civil Procedure. Said publication should provide notification of the impending seven year anniversary to all possible surface owners and unknown or unlocatable interest owners.

§37B-2-6. Crediting of interest to owner’s account.

(a) The administrator shall credit the amount of interest earned to each owner’s account and shall pay the interest earned when a claim is paid on that account.
(b) In no event shall the administrator be required to pay the owner any income or gain realized or accruing on the account after the third anniversary of the payment of the owner’s interest to the administrator.

(c) Nothing in this section shall be construed to entitle an owner to interest on property which did not realize or accrue income or gain while in possession of the administrator.

§37B-2-7. Rules.

On or before July 1, 2018, the administrator shall promulgate emergency legislative rules in accordance with the provisions of §29A-3-15 of this code. The administrator shall propose legislative rules for promulgation in accordance with the requirements of the Secretary of State and the provisions of §29A-1-1 et seq. of this code to otherwise effectuate the purposes of this article.

§37B-2-8. Severability clause.

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.

§37B-2-9. Effective date.

This article shall take effect on July 1, 2018.
AN ACT to amend and reenact §22-6-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding a new chapter, designated §37C-1-1, §37C-1-2, and §37C-1-3, all relating generally to real property; providing for quarterly reporting to the West Virginia Department of Environmental Protection and publication of same; providing rule-making authority; requiring specified information to be remitted with certain payments to interest owners; providing for written request in the event an interest owner does not receive the required information; providing for a period to provide the required information beginning when the operator or producer receives the written request for information; providing for a cause of action to enforce compliance; providing for the accumulation of proceeds under certain circumstances; providing for timely payment of moneys owed from oil and natural gas production; and establishing interest penalties for certain late payments.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.

§22-6-22. Well report, logs, core samples, and cuttings to be filed; confidentiality and permitted use; authority to
promulgate rules; reporting of production data for horizontal wells.

(a) Within a reasonable time after the completion of the drilling of a shallow well or deep well, the well operator shall file with the secretary and with the state Geological and Economic Survey a completion report containing the following:

1. The character, depth, and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations; and

2. Such other information as the secretary may require to effectuate the purposes of this chapter.

The secretary may promulgate such reasonable rules in accordance with §29A-3-1 et seq. of this code, as may be considered necessary to ensure that the character, depth, and thickness of geological formations encountered are accurately logged: Provided, That the secretary shall not require logging by the use of an electrical logging device: Provided, however, That if electrical, mechanical, or geophysical logs are recorded in the well, the secretary may request copies of these logs: Provided further, That mechanical or geophysical logs may not include vertical seismic profiles or two-dimensional or three-dimensional seismic information.

(b) If a well operator takes core samples, that activity shall be noted within the report, and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a complete set of cores, consisting of at least quarter slabs, correctly labeled and identified according to depth. The core samples requested by and provided to the state Geological and Economic Survey may not contain any materials or documents made with regard to analyzing or interpreting the core samples.
(c) If a well operator catches cuttings during the drilling of any deep or shallow well, that activity shall be noted within the report and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a sample of the cuttings, correctly labeled and identified according to depth.

(d) Any information, reports, cuttings, and core samples requested by and provided to the state Geological and Economic Survey by the operator shall be kept confidential at the written request of the operator for a specified amount of time as follows:

(1) Except for core samples, any logs, drill cuttings, reports and other information or materials that reveal trade secrets or other confidential business information relating to the competitive interests of the operator or the operator’s privy may not be disclosed to the public for one year following delivery, unless the operator consents in writing to a shorter time. At the operator’s written request, the period of confidentiality may be extended in annual increments: Provided, That the total period of confidentiality may not exceed three years.

(2) Any core samples may not be disclosed to the public for five years following delivery to the state Geological and Economic Survey, unless the operator consents in writing to a shorter time. At the operator’s written request, the period of confidentiality may be extended for an additional five years: Provided, That the total period of confidentiality may not exceed 10 years.

(e) Notwithstanding the provisions of subsection (d) of this section, the state Geological and Economic Survey may store and process confidential information within its minerals mapping or geographic information systems; however, that confidential information may not be revealed to the public until the lapsing of the period of confidentiality created pursuant to subsection (d) of this section. After the
period of confidentiality has lapsed, statistics or other information generated as the result of storage and processing may be disclosed in the aggregate through articles, reports, maps, or lectures presented in accordance with generally accepted academic or scientific practices and in a manner to preclude the identification of a particular well or operator.

(f) A quarterly report of the monthly volumes of oil, natural gas, and natural gas liquids produced from any horizontal well drilled shall be filed with the Chief of the Office of Oil and Gas on a form prescribed by the Secretary of the West Virginia Department of Environmental Protection. All reported data shall be made available to the public through the Office of Oil and Gas’ website within a reasonable time. The secretary has the express authority pursuant to this article, as well as pursuant to the powers enumerated in §22-6-2 of this code, to promulgate rules and to amend the current rules to require timely quarterly reporting of production data as well as to establish a process for collecting such data.

CHAPTER 37C. MINERAL DEVELOPMENT.

ARTICLE 1. INFORMATION REPORTING AND PAYMENTS TO OWNERS.

§37C-1-1. Oil and natural gas production information reporting from horizontal wells.

(a) An operator or producer or their agents, contractors or assigns shall provide the following information with each payment to all interest owners receiving payments resulting from the development and production of oil, natural gas, or their constituents by horizontal wells governed by §22-6A-1 et seq. of this code, being the Natural Gas Horizontal Well Control Act:

(1) A name, number, or combination of name and number, and the state issued American Petroleum Institute number that identifies each lease, property, unit, pad, and
well, for which payment is being made, and the county in which the lease, property, and well are located;

(2) Month and year of production;

(3) Total barrels of oil; number of MCF, MMBTU, or DTH of natural gas; and volume of natural gas liquids produced from each well and sold;

(4) Price received per unit of oil, natural gas, and natural gas liquids produced;

(5) Gross value of the total proceeds from the sale of oil, natural gas, and natural gas liquids from each well less taxes and deductions set forth in §37B-1-1(a)(6) of this code;

(6) Aggregate amounts for each category of deductions for each well which affect payment and are allowed by law, including without limitation those deductions provided for under the terms of the governing lease;

(7) Interest owner’s interest in production from each well expressed as a decimal or fraction and reported pursuant to §37B-1-1(a)(1) of this code;

(8) Interest owner’s ratable share of the total value of the proceeds of the sale of oil, natural gas, and natural gas liquids prior to the deduction of taxes, if applicable, and other deductions set forth in §37B-1-1(a)(6) of this code;

(9) Interest owner’s ratable share of the proceeds from the sale of oil, natural gas, and natural gas liquids less the interest owner’s ratable share of taxes, if applicable, and other deductions set forth in §37B-1-1(a)(6) of this code; and

(10) Contact information of the producer of the oil, natural gas, or natural gas liquids, including a mailing address and telephone number.
(b) An interest owner who does not receive the information required to be provided under this section in a timely manner may send a written request for the information by certified mail. Not later than the 60th day after the date the operator or producer receives the written request for information under this section, the operator or producer shall provide the requested information to the interest owner. If the interest owner makes a written request for information under this section and the operator or producer does not provide the information within the 60-day period, the interest owner may bring a civil action against the operator or producer to enforce the provisions of this section, and a prevailing interest owner shall be entitled to recover reasonable attorneys’ fees and court costs incurred in the civil action.

§37C-1-2. Accumulation and payment of proceeds from production from horizontal wells.

Notwithstanding any of the other provisions of this article, proceeds from production of oil, natural gas, and natural gas liquids from horizontal wells may be accumulated by the owners, cotenants, lessees, operators, or their agents, contractors, or assigns, until such time as proceeds attributable to any interest owner exceeds $100 before making a remittance: Provided, That, regardless of the amount of money accumulated, the owners, cotenants, lessees, operators, or their agents, contractors, or assigns shall remit proceeds from horizontal wells attributable to the interest owners not less than once annually: Provided, however, That all accumulated proceeds from horizontal wells shall be paid to the interest owners entitled thereto immediately, or as soon as practicable, upon cessation of production of oil, natural gas, or natural gas liquids or upon relinquishment or transfer of the payment responsibility to another party.

§37C-1-3. Payments from horizontal wells to be made timely; interest penalties.

All regular production payments from horizontal wells due and owing to an interest owner shall be tendered in a
timely manner, which shall not exceed 120 days from the first date of sale of oil, natural gas, or natural gas liquids is realized and within 60 days thereafter for each additional sale, unless such failure to remit is due to lack of record title in the interest owner, a legal dispute concerning the interest, a missing or unlocatable owner of the interest, or due to conditions otherwise specified in this article. Failure to remit timely payment for horizontal wells shall result in a mandatory additional payment of an interest penalty to be set at the prime rate plus an additional two percent until such payment is made, to be compounded quarterly. The prime rate shall be the rate published on the day of the sale of oil, natural gas, and natural gas liquids in the Wall Street Journal reflecting the base rate on corporate loans posted by at least 75 percent of the nation’s 30 largest banks.

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CHAPTER 151

(S. B. 525 - By Senators Gaunch, Maynard, Baldwin, Bosco, Clements, Facemire, Jeffries, Maroney, Palumbo, Smith, Sypolt and Weld)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to repeal §16-4C-6c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22A-10-3, relating to emergency medical technicians – mining; transferring certification requirements for emergency medical technician – mining to the chapter governing miners’ health, safety and training; eliminating the authority of the Director of Miners’ Health Safety and Training to authorize providers to administer certification courses and examinations; modifying requirements for
training personnel and independent trainers; and making technical corrections.

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

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

§16-4C-6c. Certification requirements for emergency medical technician – mining.

(Repealed.)

**ARTICLE 10. EMERGENCY MEDICAL PERSONNEL.**

§22A-10-3. Certification requirements for emergency medical technician – mining.

(a) An applicant for certification as an emergency medical technician - mining shall:

1. Be at least 18 years old;
2. Apply on a form prescribed by the Director of Miners’ Health, Safety and Training;
3. Pay the application fee;
4. Possess a valid cardiopulmonary resuscitation certification;
5. Successfully complete an emergency medical technician - mining education program authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety; and
6. Successfully complete emergency medical technician - mining cognitive and skills examinations authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety.
(b) The emergency medical technician - mining certification is valid for three years.

(c) A certified emergency medical technician - mining may only practice on mining operations, as defined in §11-13C-3 of this code.

(d) To be recertified as an emergency medical technician - mining, a certificate holder shall:

(1) Apply on a form prescribed by the Director of Miners’ Health, Safety and Training;

(2) Pay the application fee;

(3) Possess a valid cardiopulmonary resuscitation certification;

(4) Successfully complete one of the following:

(A) A one-time 32-hour emergency medical technician - mining recertification course authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety; or

(B) Three annual eight-hour retraining and testing programs authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety; and

(5) Successfully complete emergency medical technician - mining cognitive and skills recertification examinations authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety.

(e) The education program, training, courses, and cognitive and skills examinations required for certification and recertification as an emergency medical technician - miner, also known as emergency medical technician - mining, in existence on January 1, 2014, shall remain in
effect for the certification and recertification of emergency medical technician - industrial until they are changed by legislative rule by the director in consultation with the Board of Coal Mine Health and Safety.

(f) The administration of the emergency medical technician - mining certification and recertification program by the Director of Miners’ Health, Safety and Training shall be done in consultation with the Board of Coal Mine Health and Safety.

(g) The Director of Miners’ Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of §29A-3-1 et seq. of this code, in consultation with the Board of Coal Mine Health and Safety and may propose emergency rules to:

(1) Establish emergency medical technician - mining certification and recertification courses and examinations;

(2) Authorize providers to administer the recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, regional education service agencies, and educational service cooperatives: Provided, That the mine training personnel and independent trainers must obtain an EMT-M Instructor Certification issued by the West Virginia Office of Miners’ Health, Safety and Training;

(3) Establish a fee schedule: Provided, That the application fee may not exceed $10 and there shall be no fee for a certificate; and

(4) Implement the provisions of this section.
CHAPTER 152

(S. B. 626 - By Senator Smith)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §22-3-9 and §22-3-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-11-7a of said code; to amend and reenact §22A-1-36 of said code; to amend said code by adding thereto a new section, designated §22A-1-42; to amend and reenact §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-25, §22A-2-26, §22A-2-37, and §22A-2-55 of said code; and to amend and reenact §22A-2A-1001 of said code, all relating generally to coal mining; establishing new notice requirements regarding permit applications under the Surface Coal Mining and Reclamation Act; clarifying when a certification is granted under the Water Pollution Control Act; clarifying when a comprehensive mine safety program is subject to annual review; establishing the use of MSHA-approved ground control plans for surface operations; requiring automated external defibrillators be present on surface operations; requiring the Director of the Office of Miners’ Health, Safety, and Training to promulgate emergency rules; providing that one MSHA-approved plan may be submitted to the director in lieu of separate state-approved plans for ventilation, seals, roof control, belt air, self-contained self-rescuer storage, tracking and communication, and emergency shelters; requiring that the MSHA-approved comprehensive safety plan be forwarded to the director in a timely manner; and permitting the use of diesel-powered generators in underground mines under certain conditions.
Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-9. Permit application requirements and contents.

1 (a) The surface mining permit application shall contain:

2 (1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the property, surface, and mineral to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator, if different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

3 (2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: Provided, That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in §22-3-9(a)(6) of this code;

4 (3) A statement of any current surface mining permits held by the applicant in the state and the permit number and each pending application;

5 (4) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: The names and addresses of every officer, partner, resident agent, director or person performing a function similar to a director, together with the names and addresses of any person owning of record 10 percent or more of any class of voting stock of the applicant; and a list of all names under which the applicant, officer, director,
partner, or principal shareholder previously operated a surface mining operation in the United States within the five-year period preceding the date of submission of the application;

(5) A statement of whether the applicant, or any officer, partner, director, principal shareholder of the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever been an officer, partner, director, or principal shareholder in a company which has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been permanently suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) A copy of the applicant’s advertisement to be published in a newspaper of general circulation in the locality of the proposed permit area at least once a week for four successive weeks on a form and in a manner prescribed by the secretary, which manner may be electronic. The advertisement shall contain, in abbreviated form, the information required by this section including the ownership and map of the tract location and boundaries of the proposed site so that the proposed operation is readily locatable by local residents, the location of the office of the department where the application is available for public inspection, and stating that written protests will be accepted by the secretary until a certain date which is at least 30 days after the last publication of the applicant’s advertisement;

(7) A description of the type and method of surface mining operation that exists or is proposed, the engineering techniques used or proposed, and the equipment used or proposed to be used;

(8) The anticipated starting and termination dates of each phase of the surface mining operation and the number of acres of land to be affected;
(9) A description of the legal documents upon which the applicant’s legal right to enter and conduct surface mining operations on the proposed permit area is based and whether that right is the subject of pending court litigation: Provided, That nothing in this article may be construed as vesting in the secretary the jurisdiction to adjudicate property-rights disputes;

(10) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the secretary of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: Provided, That this determination is not required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: Provided, however, That the permit application shall not be approved until the information is available and is incorporated into the application;

(12) Accurate maps to an appropriate scale clearly showing: (A) The land to be affected as of the date of application; (B) the area of land within the permit area upon which the applicant has the legal right to enter and conduct surface mining operations; and (C) all types of information set forth on enlarged topographical maps of the United States geological survey of a scale of 1:24,000 or larger, including all man-made features and significant known archaeological sites existing on the date of application. In
addition to other things specified by the secretary, the map shall show the boundary lines and names of present owners of record of all surface areas abutting the proposed permit area and the location of all structures within 1,000 feet of the proposed permit area;

(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by, or under the direction of, and certified by a person approved by the secretary, showing pertinent elevation and location of test borings or core samplings, where required by the secretary, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) the location of any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil, waste, or refuse areas and topsoil preservation areas; (K) the location of all impoundments for waste or erosion control; (L) any settling or water treatment facility or drainage system; (M) constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator’s proposed reclamation plan;

(14) A statement of the result of test borings or core samples from the permit area, including: (A) Logs of the drill holes; (B) the thickness of the coal seam to be mined and analysis of the chemical and physical properties of the coal; (C) the sulfur content of any coal seam; (D) chemical
analysis of potentially acid or toxic forming sections of the overburden; and (E) chemical analysis of the stratum lying immediately underneath the coal to be mined: Provided, That the provisions of this subdivision may be waived by the secretary with respect to the specific application by a written determination that such requirements are unnecessary;

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the Commissioner of Agriculture in order to confirm the exact location of the prime farmlands;

(16) A reclamation plan as presented in §22-3-10 of this code;

(17) Information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest who is or may be adversely affected: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;

(18) When requested by the secretary, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and

(19) Other information that may be required by rules reasonably necessary to effectuate the purposes of this article.

(b) If the secretary finds that the probable total annual production at all locations of any coal surface mining
operator will not exceed 300,000 tons, the determination of probable hydrologic consequences including the engineering analyses and designs necessary as required by this article or rules promulgated thereunder; the development of cross-section maps and plans as required by this article or rules promulgated thereunder; the geologic drilling and statement of results of test borings and core samplings as required by this article or rules promulgated thereunder; preblast surveys required by this article or rules promulgated thereunder; the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by this article or rules promulgated thereunder; and the collection of archaeological and historical information required by this article and rules promulgated thereunder and any other archaeological and historical information required by the federal Department of the Interior and the preparation of plans that may be necessitated thereby shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the secretary and a reasonable cost of the preparation of the determination and statement shall be assumed by the department from funds provided by the United States Department of the Interior pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(c) Before the first publication of the applicant’s advertisement as provided in this section, each applicant for a surface mining permit shall file, except for that information pertaining to the coal seam itself, a copy of the application for public inspection in the nearest office of the department as specified in the applicant’s advertisement.

(d) Each applicant for a permit shall be required to submit to the secretary as a part of the permit application a certificate issued by an insurance company authorized to do business in this state covering the surface mining operation for which the permit is sought, or evidence that the applicant
has satisfied state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(e) Each applicant for a surface mining permit shall submit to the secretary as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards.

(f) The applicant shall file, as part of the permit application, a schedule listing all notices of violation, bond forfeitures, permit revocations, cessation orders, or permanent suspension orders resulting from a violation of the federal Surface Mining Control and Reclamation Act of 1977, as amended, this article or any law or regulation of the United States or any department or agency of any state pertaining to air or environmental protection received by the applicant in connection with any surface mining operation during the three-year period prior to the date of application, and indicating the final resolution of any notice of violation, forfeiture, revocation, cessation, or permanent suspension.

(g) Within five working days of receipt of an application for a permit, the secretary shall notify the operator in writing, stating whether the application is administratively complete and whether the operator’s advertisement may be published. If the application is not administratively complete, the secretary shall state in writing why the application is not administratively complete.

§22-3-20. Public notice; written objections; public hearings; informal conferences.
(a) At the time of submission of an application for a surface mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the department a copy of the required advertisement for public notice on a form and in a manner prescribed by the secretary, which manner may be electronic. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The secretary shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the proposed surface mining operation will take place, notifying them of the operator’s intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the secretary on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. The comments shall be immediately transmitted by the secretary to the applicant and to the appropriate office of the department. The secretary shall provide the name and address of each applicant to the Commissioner of the Division of Labor who shall, within 15 days from receipt, notify the secretary as to the applicant’s compliance, if necessary, pursuant to §21-5-14 of this code.

(b) Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state, or local governmental agency, has the right to file written objections to the proposed initial or revised permit application for a surface mining operation with the secretary within 30 days after the last publication of the advertisement required in §22-3-20(a) of this code. The objections shall be
immediately transmitted to the applicant by the secretary and shall be made available to the public. If written objections are filed and an informal conference requested within 30 days of the last publication of the above notice, the secretary shall then hold a conference in the locality of the proposed mining within a reasonable time after the close of the public comment period. Those requesting the conference shall be notified and the date, time, and location of the informal conference shall also be advertised by the secretary in a newspaper of general circulation in the locality on a form and in a manner prescribed by the secretary, which manner may be electronic, at least two weeks prior to the scheduled conference date. The secretary may arrange with the applicant, upon request by any party to the conference proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. The record shall be maintained and shall be accessible to the parties at their respective expense until final release of the applicant’s bond or other security posted in lieu thereof. The secretary’s authorized agent shall preside over the conference. In the event all parties requesting the informal conference stipulate agreement prior to the conference and withdraw their request, a conference need not be held.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions.

(a) Any applicant for the water quality certification that seeks certification of activities covered by the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 may be issued a certification in accordance with the legislative rules entitled Rules for Individual State Certification of Activities Requiring a Federal Permit, 47 C.S.R. 5A.
(1) The proposed activity shall comply with all applicable state and federal laws, rules, and regulations.

(2) The secretary shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, for the purpose of implementing the provisions of this section which rules shall include, but not be limited to, the following:

(A) Establishing all necessary operational and performance requirements for a person undertaking activities covered by this section;

(B) Modifying the provisions of this section, when necessary and appropriate to bring the provisions of this section into compliance with state or federal law or regulation; and

(C) Establishing the specific operational requirements for the activity consistent with this section appropriate to protect the waters of this state during and following the activity.

(b) The Joint Committee on Government and Finance may undertake or facilitate a study of the impact of mountaintop mining and valley fills upon the State of West Virginia.

(1) To facilitate the study, the Joint Committee on Government and Finance is further authorized to coordinate with and seek funding from appropriate federal agencies to facilitate the study including, but not limited to: The federal Environmental Protection Agency, Army Corps of Engineers, Office of Surface Mining Reclamation and Enforcement, and Fish and Wildlife Service.

(2) In order to facilitate the research, the Joint Committee on Government and Finance shall appoint a council to coordinate and direct the research. The composition of the council shall be determined by the joint committee, but shall include representatives from the
ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-36. Mandatory safety programs; penalties.

(a) The director, in consultation with the state Board of Coal Mine Health and Safety, shall promulgate rules in accordance with §29A-1-1 et seq. of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in §22A-1-36(b) of this code. The rules may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, or any other factor deemed relevant by the director.

(b) Within six months of the date when the rules required in §22A-1-36(a) of this code become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in accordance with such rules. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the modification or revision of such program, prior to submission of such program to the director. Upon submission of such program the director has 90 days to approve, reject, or modify such program. If the program is rejected, the director shall give the operator a reasonable time to correct and resubmit such program. An up-to-date copy of each program shall be placed on file in the office and further copies shall be made available to the miners of each mine and their representatives. Each operator shall undertake all efforts necessary to assure total compliance with the appropriate safety program at each mine and shall fully implement all portions of such program. Once approved, a comprehensive mine safety program shall not be subject to annual review.
by the director: *Provided*, That a program may be subject to
annual review by the director after a fatality or serious
accident involving bodily harm has occurred, or, if the
operator has shown a pattern of mine safety violations as
defined by §22A-1-15(2) of this code, such a finding shall
also warrant annual review by the director. The director
shall promulgate emergency rules in order to comply with
this subsection.

(c) Any person violating any provision of this section is
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not less than $100 nor more than $1,000, or
imprisoned in the county jail for not more than six months,
or both fined and imprisoned.

§22A-1-42. Surface ground control plan; automated external
defibrillator.

(a) The MSHA-approved surface ground control plan
shall serve as the state-approved plan, and the operator,
upon approval by MSHA, shall provide a copy of the
MSHA-approved surface ground control plan to the
director.

(b) Automated external defibrillators (AEDs) shall be
required on all surface mining operations. The director shall
promulgate emergency rules in order to comply with this
section of code, giving special consideration to the climate
sensitive nature of AEDs.

ARTICLE 2. UNDERGROUND MINES.

VENTILATION

§22A-2-2. Submittal of detailed ventilation plan to director.

(a) A mine operator shall submit a detailed ventilation
plan and any addenda to the director for review and
comment. The mine operator shall review the plan with the
director and address concerns to the extent practicable. The
operator shall deliver to the miners’ representative
employed by the operator at the mine, if any, a copy of the
operator’s proposed annual ventilation plan at least 10 days
prior to the date of submission. The miners’ representative,
if any, shall be afforded the opportunity to submit written
comments to the operator prior to such submission; in
addition, the miners’ representative, if any, may submit
written comments to the director. The director shall submit
any concern that is not addressed to the United States
Department of Labor - Mine Safety and Health
Administration (MSHA) through comments to the plan. The
mine operator shall provide a copy of the plan to the director
10 days prior to the submittal of the plan to MSHA. The
MSHA-approved plan shall serve as the state-approved
plan: Provided, That the MSHA-approved plan shall
comply with all provisions of state mining law as set forth
in state code or code of state rules.

(b) The operator shall give the director a copy of the
MSHA-approved plan and any addenda as soon as the
operator receives the approval.

(c) In the event of an unforeseen situation requiring
immediate action on a plan revision, the operator shall
submit the proposed revision to the director and the miners’
representative, if any, employed by the operator at the mine
when the proposed revision is submitted to MSHA. The
director shall work with the operator to review and comment
on the proposed plan revision to MSHA as quickly as
possible.

(d) Upon approval by MSHA, the plan is enforceable by
the director. The approved plan and all revisions and
addenda thereto shall be posted on the mine bulletin board
and made available for inspection by the miners at that mine
for the period of time that they are in effect.


(a) The ventilation of mines, the systems for which
extend for more than 200 feet underground, and which are
opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in 15 minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in 15 minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners, or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than 15 feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: Provided, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: Provided, however, That there is another opening having a weak wall stopping or explosion doors that would be in direct line with
forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: Provided, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be, by means of the primary air current conducted into the place, in a manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends, and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a
representative of the Office of Miners’ Health, Safety, and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

(h) The MSHA-approved plan relating to fans shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.


(a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries shall be not less than 9,000 cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of 3,000 cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than 9,000 cubic feet of air per minute if at least 9,000 cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. The operator shall provide to the safety committee access to anometers and smoke tubes while performing their duties. All active underground working places in a mine shall be ventilated by a current of air containing not less than 19 and five-tenths percent of oxygen, not more than five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

(b) Airflow shall be maintained in all intake and return air courses of a mine and, where multiple fans are used,
neutral areas created by pressure equalization between main fans shall not be permitted. Production activities in working faces shall cease while tubing, line brattice or other ventilation devices are being installed in by the machine operator.

(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(d) Brattice cloth used underground shall be of flame-resistant material. The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive and noxious gases, dust, and explosive fumes.

(e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a separate split of air: Provided, That in areas already under development and in areas where physical conditions prevent compliance with this provision, the director may grant temporary relief from compliance until such time as physical conditions make compliance possible. The quantity of air reaching the last crosscut shall not be less than 9,000 cubic feet of air per minute and shall under any condition have sufficient volume and velocity to reduce and carry away smoke and flammable or harmful gases from each working face in the section.

(f) As working places advance, crosscuts for air shall be made not more than 105 feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All
crosscuts between the main intake and return airways not required for passage of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistant material so as to keep working places well ventilated. In mines where it becomes necessary to provide larger pillars for adequate roof support, working places shall not be driven more than 200 feet without providing a connection that will allow the free flow of air currents. In such cases, a minimum of 12,000 cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.

(g) In special instances for the construction of sidetracks, haulageways, airways, or openings in shaft bottom or slope bottom layouts where the size and strength of pillars is important, the director may issue a permit approving greater distances. The permit shall specify the conditions under which such places may be driven.

(h) In all mines a system of bleeder openings on air courses, designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas, and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected after July 1, 1971.

(i) If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return if at least 20,000 cubic feet of air per minute is delivered to the intake of the pillar line.

(j) No operator or mine foreman shall permit any person to work where he or she is unable to maintain the quantity and quality of the air current as heretofore required: Provided, That such provisions shall not prohibit the employment of men to make place of employment safe.
(k) The ventilation of any mine shall be so arranged by means of air locks, overcasts or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a mine, they shall be erected in pairs so as to provide a ventilated air lock unless the doors are operated mechanically.

(l) A crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

(m) Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

(n) After January 1, 1987, all run through check curtains shall be substantially constructed of translucent material, except that where belting material has to be used because of high velocity, there shall be a window of translucent material at least 30 inches square or one-half the height of the coal seam, whichever is less.

(o) The MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.

§22A-2-4a. Use of belt air.

(a) Definitions. — For purposes of this section, “belt air” means the use of a belt conveyor entry as an intake air course to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed.

(b) Upon the effective date of the enactment of this section, belt air may not be used to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed: Provided, That if an alternative method of ventilation will at all times guarantee no less than the same measure of protection afforded the miners of an underground mine by the foregoing or if the application of the foregoing to an
underground mine will result in a diminution of safety to the miners in the mine, the director may approve the interim use of belt air pursuant to the following. The MSHA-approved plan for use of belt air shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall contain all provisions of state mining law as set forth in state code or code of state rules.

§22A-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after July 1, 1971, shall be sealed or ventilated. If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until the panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent, are reopened, the director shall be notified.

(c) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, a professional engineer registered with
the Board of Registration for Professional Engineers pursuant to §30-13-1 et seq. of this code shall certify the design of all new seals as meeting the criteria established by the director. Every seal design shall have the professional engineer’s certificate and signature, in addition to his or her seal, in the following form:

“I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations.

_____________________P.E.”

(d) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the director shall approve the construction of all new seals in accordance with rules authorized in this section. The construction shall also be:

(1) Certified by the mine foreman-fire boss of the mine as being in accordance with the design certified by a professional engineer pursuant to §22A-2-5(c) of this code;

and

(2) (A) Constructed of solid concrete blocks and in accordance with the other provisions of 30 CFR 75.335(a)(1); or

(B) Constructed in a manner that the director has approved as having the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1).

(e) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the operator shall inspect the physical condition of all seals and measure the atmosphere behind all seals in accordance with protocols developed by the Board of Coal Mine Health and Safety, pursuant to rules authorized in this section and consistent with a mine-
specific atmospheric measurement plan submitted to and approved by the director. The atmospheric measurements shall include, but not be limited to, the methane and oxygen concentrations and the barometric pressure. The atmospheric measurements also shall be recorded with ink or indelible pencil in a book kept for that purpose on the surface at a location designated by the operator. The protocols shall specify appropriate methods for inspecting the physical condition of seals, measuring the mine atmosphere in sealed workings, and inerting the mine atmosphere behind the seals, where appropriate.

(f) (1) In all mines containing workings sealed using seals constructed in accordance with the provisions of 30 CFR 75.335(a)(2) which are constructed: (A) Of cementitious foam blocks; or (B) with methods or materials that the Board of Coal Mine Health and Safety determines do not provide an adequate level of protection to miners, the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals or constructing new seals in place of or immediately outby the seals. After being remediated, all seals must have the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1). The design, development, submission and implementation of the remediation plan is the responsibility of the operator of each mine. Pursuant to rules authorized in this section, the Board of Coal Mine Health and Safety shall specify appropriate methods of enhancing the seals.

(2) Notwithstanding any provision of this code to the contrary, if the director determines that any seal described in §22A-2-5(f)(1) of this code is incapable of being remediated in a safe and effective manner, the mine foreman-fire boss shall, at least once every 24 hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. The daily inspections and measurements shall otherwise be performed in accordance
with the protocols and atmospheric measurement plan established pursuant to §22A-2-5(e) of this code.

(g) Upon the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, second mining of lower coal on retreat, also known as bottom mining, shall not be permitted in workings that will be sealed unless an operator has first submitted and received approval by the director of a remediation plan that sets forth measures that will be taken to mitigate the effects of remnant ramps and other conditions created by bottom mining on retreat which can increase the force of explosions originating in and emanating out of workings that have been bottom mined. The director shall require that certification in a manner similar to that set forth in §22A-2-5(c) of this code shall be obtained by the operator from a professional engineer and the mine foreman-fire boss for the plan design and plan implementation, respectively.

(h) No later than 60 days after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the Board of Coal Mine Health and Safety shall develop and promulgate rules pursuant to the provisions of §22A-6-4 of this code to implement and enforce the provisions of this section.

(i) Upon the issuance of mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines by the Secretary of the United States Department of Labor pursuant to 30 U. S. C. §811, as amended by section 10 of the federal Mine Improvement and New Emergency Response Act of 2006, the director, working in consultation with the Board of Coal Mine Health and Safety, shall, within 30 days, provide the Governor with his or her recommendations, if any, for the enactment, repeal, or amendment of any statute or rules which would enhance the safe sealing of abandoned mine workings and the health and safety of miners.
(j) The MSHA-approved plan for seals shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

ROOF – FACE – RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification, or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his or her authorized representative and shall be available to the miners and their representatives. The MSHA-approved roof control plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other
locations in the coal mine, as the director may prescribe, an
ample supply of suitable materials of proper size with which
to secure the roof thereof of all working places in a safe
manner. Safety posts, jacks, or other approved devices shall
be used to protect the workmen when roof material is being
taken down, crossbars are being installed, roof bolt holes are
being drilled, roof bolts are being installed, and in such other
circumstances as may be appropriate. Loose roof and
overhanging or loose faces and ribs shall be taken down or
supported. When overhangs or brows occur along rib lines
they shall be promptly removed. All sections shall be
maintained as near as possible on center. Except in the case
of recovery work, supports knocked out shall be replaced
promptly. Apprentice miners shall not be permitted to set
temporary supports on a working section without the direct
immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to
prevent injuries and deaths resulting from working under
unsupported roof. Every operator shall require that no
person may proceed beyond the last permanent support
unless adequate temporary support is provided or temporary
support is not required under an approved roof control plan
and absence of such support will not pose a hazard to the
miners.

(d) The immediate supervisor of any area in which
unsupported roof is located shall not direct or knowingly
permit any person to proceed beyond the last permanent
support unless adequate temporary support is provided or
temporary support is not required under an approved roof
control plan and absence of such support will not pose a
hazard to the miners.

(e) No miner shall proceed beyond the last permanent
support in violation of a direct or standing order of an
operator, a foreman or an assistant foreman, unless adequate
temporary support is provided or temporary support is not
required under an approved roof control plan and absence
of such support will not pose a hazard to the miner.
(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner.

(g) Any action taken against a miner due, in whole or in part, to his or her refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to §22A-1-22 of this code. Upon a finding of discrimination by the appeals board pursuant to §22A-1-22(b) of this code, the miner shall be awarded by the appeals board all reliefs available pursuant to §22A-1-22(b) and §22A-1-22(c) of this code.

§22A-2-26. Roof support; specific requirements.

(a) Generally. — The method of mining followed in any coal mine may not expose the miner to unusual dangers from roof falls, and the MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

(b) Roadways, intersections, and arches. — The width of roadways shall not exceed 16 feet unless additional support is added cross sectional. During the development of intersections, the roof between the tangents of the arches in the entry or room shall be supported with artificial roof supports prior to the development of such intersections. All areas where the arch is broken shall be considered as having unsupported roof and such roof should have artificial roof supports installed prior to any other work being performed in the area.

(c) Examinations and corrections. — Where miners are exposed to danger from falls of roof, face and ribs, the operator shall examine and test the roof, face and ribs before any work or machine is started, and as frequently thereafter
as may be necessary to insure safety. When dangerous
conditions are found, they shall be corrected immediately.
A probe or probes for methane detectors shall be provided
on each working section other than longwall sections and
sections mined solely with continuous miners with integral
roof bolters.

(d) Roof bolt recovery. — Roof bolts shall not be
recovered where complete extraction of pillars is attempted,
where adjacent to clay veins or at the locations of other
irregularities, whether natural or otherwise, that induce
abnormal hazards. Where roof bolt recovery is permitted, it
shall be conducted only in accordance with methods
prescribed in the approved roof control plan, and shall be
conducted by experienced miners and only where adequate
temporary support is provided.

TRANSPORTATION

§22A-2-37. Haulage roads and equipment; shelter holes;
prohibited practices; signals; inspection.

(a) Use of haulage roads and equipment along with
signals and inspection shall meet standards established by
the U. S. Mine Safety and Health Administration. The
roadbed, rails, joints, switches, frogs, and other elements of
all haulage roads shall be constructed, installed, and
maintained in a manner consistent with speed and type of
haulage operations being conducted to ensure safe
operation. Where transportation of personnel is exclusively
by rail, track shall be maintained to within 1,500 feet of the
nearest working face, except that when any section is fully
developed and being prepared for retreating, then the track
shall be maintained to within 1,500 feet of that retreat
mining section if a rubber tired vehicle is readily available:
Provided, That in any case where such track is maintained
to within a distance of more than 500 feet and not more than
1,500 feet of the nearest working face, a self-propelled,
rubber-tired vehicle capable of transporting an injured
worker shall be readily available.
(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries shall have a continuous, unobstructed clearance of at least 24 inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or “tight” side, there shall be at least 12 inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies, or other material: Provided, That not more than 24 inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors which in no event shall be less than 24 inches.

(i) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced not more than 105 feet apart, except when variances are authorized by the director with unanimous agreement of the Mine Safety and Technical Review Committee. Shelter holes shall be on the side of the entry opposite the trolley wire except that shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director. The MSHA-approved plan shall serve as the state-approved plan governing the use of shelters: Provided, That the MSHA-approved plan shall
comply with all other provisions of state mining law as set forth in state code or code of state rules.

(j) Shelter holes shall be at least five feet in depth, not more than four feet in width and as high as the traveling space, unless the director with unanimous agreement of the Mine Safety and Technical Review Committee grants a waiver. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and other obstructions.

(l) Shelter holes shall be provided at switch throws and manually operated permanent doors.

(m) No steam locomotive shall be used in mines where miners are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.

(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine, unless the equipment is diesel-powered equipment approved, operated and maintained as provided in §22A-2-1 et seq. of this code.

(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier, barrier tractor, and other related equipment shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.
(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him or her in his or her duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: Provided, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion: Provided, however, That trip lights need not be used on cars being shifted to and from loading machines, or on cars being handled at loading heads during gathering operations at working faces. No person, other than the motorman and brakeman, should ride on a locomotive unless authorized by the mine foreman, and then only when safe riding facilities are provided. An empty car or cars shall be used to provide a safe distance between the locomotive and the material car when rail, pipe, or long timbers are being hauled. A safe clearance shall be maintained between the end car or trips placed on side tracks and moving traffic. On haulage roads the clearance point shall be marked with an approved device.

(r) No motorman, trip rider, or brakeman shall get on or off cars, trips, or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail, or open or close a door.

(s) Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over 80 feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during
the loading operation when he or she shall face the loading
machine.

(t) (1) A system of signals, methods, or devices shall be
used to provide protection for trips, locomotives, and other
equipment coming out onto tracks used by other equipment.

(2) In any coal mine where more than 350 tons of coal
are produced on any shift in each 24-hour period, a
dispatcher shall be on duty when there are movements of
track equipment underground, including time when there is
no production of coal. Such traffic shall move only at the
direction of the dispatcher.

(3) The dispatcher’s only duty shall be to direct traffic:
Provided, That the dispatcher’s duties may also include
those of the responsible person required by §22A-2-42 of
this code: Provided, however, That the dispatcher may
perform other duties which do not interfere with his or her
dispaching responsibilities and do not require him or her to
leave the dispatcher’s station except as approved by the
Mine Safety and Technical Review Committee.

(4) Any dispatcher’s station shall be on the surface.

(5) All self-propelled track equipment shall be equipped
with two-way communications.

(u) Motormen shall inspect locomotives, and report any
mechanical defects found to the proper supervisor before a
locomotive is put in operation.

(v) A locomotive following another trip shall maintain
a distance of at least 300 feet from the rear end of the trip
ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stop blocks or derails shall be installed on
all tracks near the top and at landings of shafts, slopes, and
surface inclines. Positive-acting stop blocks or derails shall
be used where necessary to protect persons from danger of
runaway haulage equipment.
(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator: Provided, That the addition of or use of sideboards on shuttle cars shall be permitted if the shuttle car is equipped with cameras: Provided, however, That shuttle cars with sideboards as manufactured by an equipment manufacturer shall be permitted to be used without the use of cameras if permitted by the director.

(y) Mining equipment shall not be parked within 15 feet of a check curtain or fly curtain.

(z) All self-propelled track haulage equipment shall be equipped with an emergency stop switch, self-centering valves, or other devices designed to de-energize the traction motor circuit in the event of an emergency. All track-mounted trolley equipment shall be equipped with trolley pole swing limiters or other means approved by the Mine Safety and Technical Review Committee to restrict movement of the trolley pole when it is disengaged from the trolley wire. Battery powered mobile equipment shall have the operating controls clearly marked to distinguish the forward and reverse positions.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: Provided, That
metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than 48 inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f) (1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

(2) In addition to the requirements of §22A-2-55(f)(1) of this code, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to §22A-2-55(i) of this code. A luminescent sign with the words “SELF-CONTAINED SELF-RESCUER” or “SELF-CONTAINED SELF-RESCUERS” shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.
(3) Any person who, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord or knowingly tampers with or attempts to tamper with the device or lifeline cord is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years, or fined not less than $10,000 nor more than $100,000, or both imprisoned and fined.

(g) The MSHA-approved emergency response plan (ERP) shall serve as the state-approved plan governing the storage of self-contained self-rescuers (SCSR). At a minimum, three one-hour SCSR shall be available for everyone reasonably likely to be on the working section at any given time. The director may issue a special assessment pursuant to §22A-1-21 of this code for failure to comply with this subsection.

(h)(1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground: Provided, That if a miner’s wireless emergency communications device shall malfunction or cease to operate then such miner shall be assigned to be in sight or sound of a certified miner until such time an operating device shall be delivered. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.
(2) Any person who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years, or fined not less than $10,000 nor more than $100,000, or both imprisoned and fined.

(i)(1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) The MSHA-approved ERP shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all other provisions of state mining law as set forth in state code or the code of state rules.

(3) Any person who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment is guilty of a felony and, upon
conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years, or fined not less than $10,000 nor more than $100,000, or both imprisoned and fined.

(j) The director shall promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of §29A-3-1 et seq. of this code.

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.

Unless otherwise revised, by August 31, 2018, 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 §22A-2A-301 of this code;

(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 underground mine to the surface no less than once in a 24-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 200 hours of engine operation, and that diagnostic testing of engine operation occur at 200 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 30 seconds for 90 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;

(9) To remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations; and

(10) To permit the use of diesel generators in underground mines so long as the generator is vented directly to the return and at least one person is present within sight and sound of the generator: Provided, That all current state rules and statutes relating to the use of diesel-powered equipment and electricity generation remain in force.
AN ACT to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to the issuance of personalized license plates for antique motor vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration, and use of classic motor vehicles and classic motorcycles; customized antique plates.

(a) The annual registration fee for any antique motor vehicle or motorcycle as defined in this section is $2. As used in this section:

“Antique motor vehicle” means any motor vehicle which is more than 25 years old and is owned solely as a collector’s item.

“Antique motorcycle” means any motorcycle which is more than 25 years old and is owned solely as a collector’s item.
“Classic motor vehicle” means a motor vehicle which is more than 25 years old and is registered pursuant to §17A-10-3 of this code and is used for general transportation.

“Classic motorcycle” means a motorcycle which is more than 25 years old and is registered pursuant to §17A-10-3 of this code and is used for general transportation.

(b) Except as otherwise provided in this section, antique motor vehicles or motorcycles may not be used for general transportation but may only be used for:

(1) Participation in club activities, exhibits, tours, parades, and similar events;

(2) The purpose of testing their operation, obtaining repairs or maintenance, and transportation to and from events as described in §17A-10-3a(b)(1) of this code; and

(3) Recreational purposes over weekends, beginning on Friday at 12:00 p. m., and ending on the following Monday at 12:00 p. m., and on holidays: Provided, That a classic motor vehicle or a classic motorcycle as defined in this section may be registered under the applicable class at the applicable registration fee set forth in §17A-10-3 of this code and may be used for general transportation.

(c) A West Virginia motor vehicle or motorcycle displaying license plates of the same year of issue as the model year of the antique motor vehicle or motorcycle, as authorized in this section, may be used for general transportation purposes if the following conditions are met:

(1) The license plate’s physical condition has been inspected and approved by the Division of Motor Vehicles;

(2) The license plate is registered to the specific motor vehicle or motorcycle by the Division of Motor Vehicles;

(3) The owner of the motor vehicle or motorcycle annually registers the motor vehicle or motorcycle and pays
an annual registration fee for the motor vehicle or
motorcycle equal to that charged to obtain regular state
license plates;

(4) The motor vehicle or motorcycle passes an annual
safety inspection; and

(5) The motor vehicle or motorcycle displays a sticker
attached to the license plate, issued by the division,
indicating that the motor vehicle or motorcycle may be used
for general transportation.

(d) If more than one request is made for license plates
having the same number, the division shall accept only the
first application.

(e) The commissioner may propose rules for legislative
approval in accordance with the provisions of §29A-3-1 et
seq. of this code as may be necessary or convenient for the
carrying out of the provisions of this section.

(f) Upon appropriate application, together with a
special annual fee of $40, which is in addition to all other
fees required by this chapter, there shall be issued to the
owner of an antique motor vehicle a special registration
plate for an antique motor vehicle titled in the name of the
qualified applicant, bearing a combination of letters or
numbers requested by that applicant, subject to the
approval by the commissioner, and with the maximum
number of letters or numbers to be determined by the
commissioner.
CHAPTER 154

(Com. Sub. for S. B. 590 - By Senators Jeffries, Baldwin, Beach, Clements, Cline, Facemire, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Trump, Unger, Weld and Woelfel)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to providing a special license plate to support a cure for childhood cancer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division, upon registering a vehicle, shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of
this state, which may be abbreviated; and the year number
for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and
numerals on the plate shall be of sufficient size to be plainly
readable from a distance of 100 feet during daylight:
Provided, That the requirements of this subdivision shall not
apply to the year number for which the plate is issued or the
date of expiration.

(3) Registration numbering for registration plates shall
begin with number two.

(c) The division may not issue, permit to be issued or
distribute any special registration plates except as follows:

(1) The Governor shall be issued two registration plates,
on one of which shall be imprinted the numeral one and on
the other the word one.

(2) State officials and judges may be issued special
registration plates as follows:

(A) Upon appropriate application, the division shall
issue to the Secretary of State, State Superintendent of
Schools, Auditor, Treasurer, Commissioner of Agriculture,
and the Attorney General, the members of both houses of
the Legislature, including the elected officials of both
houses of the Legislature, the justices of the Supreme Court
of Appeals of West Virginia, the representatives and
Senators of the state in the Congress of the United States,
the judges of the West Virginia circuit courts, active and
retired on senior status, the judges of the United States
district courts for the State of West Virginia and the judges
of the United States Court of Appeals for the fourth circuit,
if any of the judges are residents of West Virginia, a special
registration plate for a Class A motor vehicle and a special
registration plate for a Class G motorcycle owned by the
official or his or her spouse: Provided, That the division
may issue a Class A special registration plate for each
vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official’s term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of $15 for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) The division may issue members of the National Guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the Army National Guard or Air National Guard, as appropriate, or the commanding officer of any United States Armed Forces Reserve unit that the applicant is a member thereof, the division shall issue to any member of the National Guard of this state or a member of any Reserve unit of the United States armed forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member. Upon presentation of written evidence of retirement status, retired members of this state’s Army or Air National Guard, or retired members of any Reserve unit of the United States armed forces, are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) The division shall charge an initial application fee of $10 for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. Except as otherwise provided herein, effective July 1, 2007, all fees currently held in the special revolving fund used in the administration of this
section and all fees collected by the division shall be
deposited in the State Road Fund.

(C) A surviving spouse may continue to use his or her
deceased spouse’s National Guard forces license plate until
the surviving spouse dies, remarries or does not renew the
license plate.

(4) Specially arranged registration plates may be issued
as follows:

(A) Upon appropriate application, any owner of a motor
vehicle subject to Class A registration, or a motorcycle
subject to Class G registration, as defined by this article,
may request that the division issue a registration plate
bearing specially arranged letters or numbers with the
maximum number of letters or numbers to be determined by
the commissioner. The division shall attempt to comply
with the request wherever possible.

(B) The commissioner shall propose rules for legislative
approval in accordance with the provisions of §29A-1-1 et seq. of this code regarding the orderly distribution of the
plates: Provided, That for purposes of this subdivision, the
registration plates requested and issued shall include all
plates bearing the numbers two through two thousand.

(C) An annual fee of $15 shall be charged for each
special registration plate issued pursuant to this subdivision,
which is in addition to all other fees required by this chapter.

(5) The division may issue honorably discharged
veterans special registration plates as follows:

(A) Upon appropriate application, the division shall
issue to any honorably discharged veteran of any branch of
the armed services of the United States a special registration
plate for any number of vehicles titled in the name of the
qualified applicant with an insignia designed by the
Commissioner of the Division of Motor Vehicles.
(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration. All fees collected by the division shall be deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters “DV” in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse’s disabled veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veterans license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(7) The division may issue recipients of the distinguished Purple Heart medal special registration plates as follows:
(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished Purple Heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the Purple Heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s Purple Heart medal license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(D) A recipient of the Purple Heart medal may obtain a second Purple Heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on December 7, 1941, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles.
(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations authorized under prior enactment of this subdivision as follows:

(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of $15, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the Division of Motor Vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations’ logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.
(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in the State Road Fund. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the State Fire Commission, the State Fire Marshal, the State Fire Marshal’s assistants, the State Fire Administrator, and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All
special fees shall be collected by the division and deposited into the State Road Fund.

(11) The division may issue specified certified firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified firefighter may apply for a special license plate which bears the insignia of the profession, for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees. The firefighter certification department, section or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.
(12) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words “Wild Wonderful” as a slogan.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund.

(13) The division may issue honorably discharged Marine Corps league members special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged Marine Corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division may charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged Marine Corps league license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:
(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of $10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.

(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(B) The division shall charge an annual fee of $15 for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees
required by this chapter. All annual fees collected for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the Nongame Wildlife Fund and credited to the Division of Natural Resources.

(C) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in the State Road Fund.

(16) The division may issue members of the Silver Haired Legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the Silver Haired Legislature a specialized registration plate which bears recognition of the applicant as a member of the Silver Haired Legislature.

(B) A qualified member of the Silver Haired Legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of $15, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the division shall be deposited in the State Road Fund.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle as defined in §17A-10-3a of this code, a special registration plate designed by the commissioner. An annual fee of $15, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the
armed services of the United States a special registration plate for any number of motorcycles subject to Class G registration titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee is to be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(B) An annual fee of $25 shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(20) The division may issue recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal special registration plates as follows:
(A) Upon appropriate application, the division shall issue to any recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the Commissioner of the Division of Motor Vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal as applicable.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal special registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War, or the War Against Terrorism a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner denoting service in the applicable conflict.
(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans’ registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(22) The division may issue special volunteer firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman’s helmet insignia on the left side of the license plate.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the applicant’s fire chief, stating that the applicant is a volunteer firefighter and justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into the State Road Fund.
(23) The division may issue special registration plates which reflect patriotic themes, including the display of any United States symbol, icon, phrase, or expression which evokes patriotic pride or recognition. The division shall also issue registration plates with the words “In God We Trust”.  
(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant’s choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the Commissioner of the Division of Motor Vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of the license plates designated by this subdivision.

(24) Special license plates bearing the American flag and the logo “9/11/01”.

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo “9/11/01”.

(B) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development
movement and honoring the Future Farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands, and health as well as the symbol of the Future Farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special 4-H Future Farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state’s elementary and secondary schools and in the state’s institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special educator registration plate in addition to all other fees required by this chapter.

(27) The division may issue special registration plates to members of the Nemesis Shrine as follows:
(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Nemesis Shrine.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Nemesis Shrine to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(28) The division may issue volunteers and employees of the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified volunteer or employee of the American Red Cross a specialized registration plate which bears recognition of the applicant as a volunteer or employee of the American Red Cross for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.
(29) The division shall issue special registration plates to individuals who have received either the Combat Infantry Badge or the Combat Medic Badge as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received either the Combat Infantry Badge or the Combat Medic Badge.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Knights of Columbus to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2007.
(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. The design of the plate shall indicate total years of service in the Legislature.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(32) Democratic state or county executive committee member special registration plates:

(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.

(B) An annual fee of $25 shall be charged for each democratic state or county executive committee member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision shall be deposited into the State Road Fund.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition
to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(D) The division shall not begin production of a plate authorized under the provisions of this subdivision until the division receives at least 100 completed applications from the state or county executive committee members, including all fees required pursuant to this subdivision.

(E) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the democratic executive committee to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(33) The division may issue honorably discharged female veterans’ special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any female honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a woman veteran.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners
may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of $15, which is in addition to any other registration or license fee required by this chapter. The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(35) The division may issue special registration plates to members of the Harley Owners Group as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Harley Owners Group.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for persons retired from any branch of the armed services of the United States as follows:

(A) Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to
designate the recipient as retired from the armed services of the United States.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s retired military license plate until the surviving spouse dies, remarries or does not renew the license plate.

(37) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for Fairmont State College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(38) The division may issue special registration plates honoring the farmers of West Virginia as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia may apply for a special license plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner.
(B) The division shall charge a special initial application fee of $10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates promoting education as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children’s education-related theme as prescribed and designated by the commissioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne Division Association special registration plates as follows:

(A) The division may issue a special registration plate for members of the 82nd Airborne Division Association upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the 82nd Airborne Division Association in good standing, as determined by the governing body of the organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of $10 for each special license plate in
addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: Provided, That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s special 82nd Airborne Division Association registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(41) The division may issue special registration plates to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency.

(A) Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the State Police, or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs’ Association, the West Virginia Troopers Association, or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(B) Registration plates issued pursuant to this subdivision are exempt from the registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s special registration plate until the surviving spouse dies, remarries or does not renew the plate.

(D) Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this section for
use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(42) The division may issue a special registration plate for persons who are Native-Americans and residents of this state.

(A) Upon appropriate application, the division shall issue to an applicant who is a Native-American resident of West Virginia a registration plate for a vehicle titled in the name of the applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a Native American.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(43) The division may issue special registration plates commemorating the centennial anniversary of the creation of Davis and Elkins College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to commemorate the centennial anniversary of Davis and Elkins College for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.
The division may issue special registration plates recognizing and honoring breast cancer survivors. The division may also issue special registration plates to support a cure for childhood cancer.

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and honor breast cancer survivors, such plate to incorporate somewhere in the design the “pink ribbon emblem”, for any number of vehicles titled in the name of the applicant. Upon appropriate application, the division may also issue a special registration plate designed by the commissioner to support a cure for childhood cancer, such plate to incorporate somewhere in the design the gold ribbon emblem with “WV Kids Cancer Crusaders” below or next to the emblem and “Cure Childhood Cancer” at the bottom of the plate, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(45) The division may issue special registration plates to members of the Knights of Pythias or Pythian Sisters as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Pythias or Pythian Sisters.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This
special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(46) The commissioner may issue special registration plates for whitewater rafting enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

(47) The division may issue special registration plates to members of Lions International as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with Lions International for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Lions International.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.
(48) The division may issue special registration plates supporting organ donation as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner which recognizes, supports and honors organ and tissue donors and includes the words “Donate Life”.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(49) The division may issue special registration plates to members of the West Virginia Bar Association as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the West Virginia Bar Association for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the West Virginia Bar Association.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(50) The division may issue special registration plates bearing an appropriate logo, symbol or insignia combined with the words “SHARE THE ROAD” designed to promote bicycling in the state as follows:
(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(51) The division may issue special registration plates honoring coal miners and the coal industry as follows:

(A) Upon appropriate application, the division shall issue a special registration plate depicting and displaying coal miners in mining activities as prescribed and designated by the commissioner and the board of the National Coal Heritage Area Authority. The division may also issue registration plates with the words “Friends of Coal”.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of the license plates designated by this subdivision.

(52) The division may issue special registration plates to present and former Boy Scouts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the
commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of present or past membership in the Boy Scouts as either a member or a leader.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(53) The division may issue special registration plates to present and former Boy Scouts who have achieved Eagle Scout status as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of achievement of Eagle Scout status.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(54) The division may issue special registration plates recognizing and memorializing victims of domestic violence.

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and memorialize victims of domestic violence, such plate to incorporate somewhere in
the design the “purple ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(55) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for the University of Charleston as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.
(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(57) The commissioner may issue special registration plates for horse enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

(58) The commissioner may issue special registration plates to the next of kin of a member of any branch of the armed services of the United States killed in combat as follows:

(A) Upon appropriate application, the division shall issue a special registration plate for any number of vehicles titled in the name of a qualified applicant depicting the Gold Star awarded by the United States Department of Defense as prescribed and designated by the commissioner.

(B) The next of kin shall provide sufficient proof of receiving a Gold Star lapel button from the United States Department of Defense in accordance with Public Law 534, 89th Congress, and criteria established by the United States
Department of Defense, including criteria to determine next of kin.

(C) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of the special license plates designated by this subdivision.

(59) The commissioner may issue special registration plates for retired or former Justices of the Supreme Court of Appeals of West Virginia as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of the special license plates designated by this subdivision.

(60) Upon approval by the commissioner of an appropriate application, and upon all requirements of this subdivision being satisfied, the division may issue special registration plates for Class A and Class G motor vehicles to members of an organization for which a special registration plate has not been issued pursuant to any other
subdivision in this subsection prior to January 1, 2010, in accordance with the provisions of this subdivision.

(A) An organization desiring to create a special registration plate must comply with the following requirements to be eligible to apply for the creation and issuance of a special registration plate:

(i) The organization must be a nonprofit organization organized and existing under Section 501(c)(3) of Title 26 of the Internal Revenue Code and based, headquartered or have a chapter in West Virginia;

(ii) The organization may be organized for, but may not be restricted to, social, civic, higher education or entertainment purposes;

(iii) The organization may not be a political party and may not have been created or exist primarily to promote a specific political or social belief, as determined by the commissioner in his or her sole discretion;

(iv) The organization may not have as its primary purpose the promotion of any specific faith, religion, religious belief or antireligion;

(v) The name of the organization may not be the name of a special product or brand name, and may not be construed, as determined by the commissioner, as promoting a product or brand name; and

(vi) The organization’s lettering, logo, image or message to be placed on the registration plate, if created, may not be obscene, offensive or objectionable as determined by the commissioner in his or her sole discretion.

(B) Beginning July 1, 2010, an organization requesting the creation and issuance of a special registration plate may make application with the division. The application shall include sufficient information, as determined by the
commissioner, to determine whether the special registration plate requested and the organization making the application meet all of the requirements set forth in this subdivision. The application shall also include a proposed design, including lettering, logo, image or message to be placed on the registration plate. The commissioner shall notify the organization of the commissioner’s approval or disapproval of the application.

(C)(i) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this subdivision until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 250 persons and collectively deposited with the division all fees necessary to cover the first year’s basic registration, one-time design and manufacturing costs and to cover the first year additional annual fee for all of the applications submitted.

(ii) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate will not be produced until a new application is submitted and is approved by the commissioner: Provided, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(D) The division shall charge a special initial application fee of $25 for each special license plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(E) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.
(F) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the organization.

(G) The commissioner shall discontinue the issuance or renewal of the registration of any special plate issued pursuant to this subdivision if:

(i) The number of valid registrations for the specialty plate falls below 250 plates for at least 12 consecutive months; or

(ii) The organization no longer exists or no longer meets the requirements of this subdivision.

(d) The minimum number of applications required prior to design and production of a special license plate shall be as follows:

(1) The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least 100 persons complete an application and deposit with the organization a check to cover the first year’s basic registration, one-time design and manufacturing costs and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: Provided, That an organization or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization: Provided, however, That the provisions of this subdivision are not
applicable to the issuance of plates authorized pursuant to §17A-3-14(c)(60) of this code.

(2) The commissioner may not begin the design or production of any license plates authorized by this section for which membership or affiliation with a particular organization is not required until at least 250 registrants complete an application and deposit a fee with the division to cover the first year’s basic registration fee, one-time design and manufacturing fee and additional annual fee if applicable. If the commissioner fails to receive the required number of applications within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: Provided, That if the minimum number of applications is not satisfied within the six months of the effective date of the original authorizing legislation, a person may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization.

(e)(1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse’s prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second special plate.
(f) The division may issue special 10-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than 10 years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by §17A-10-3a of this code: Provided, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by §17A-10-15, §17A-3-3, or §17A-10-3a of this code for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by §17D-2A-3 of this code or from paying personal property taxes on any motor vehicle as required by §17A-3-3a of this code.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner. The commissioner shall, whenever possible and cost effective, implement the latest technology in the design, production and issuance of registration plates, indices of registration renewal and vehicle ownership documents, including, but not limited to, offering Internet renewal of vehicle registration and the use of bar codes for instant
identification of vehicles by scanning equipment to promote the efficient and effective coordination and communication of data for improving highway safety, aiding law enforcement and enhancing revenue collection.

(i) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

CHAPTER 155

(Com. Sub. for H. B. 2008 - By Delegates Gearheart and Hamrick)

[Passed March 9, 2018; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §17A-6-2a of the Code of West Virginia, 1931, as amended, relating generally to the Dealer Recovery Fund; specifying that the Dealer Recovery Fund Control Board has discretionary jurisdiction to hear claims; and providing the types of claims for damages that may be awarded from the Dealer Recovery Fund.

Be it enacted by the Legislature of West Virginia:

That §17A-6-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.
§17A-6-2a. Dealer recovery fund created.

(a) There is hereby created a special fund in the State Treasury which is to be designated the “Dealer Recovery Fund.” The fund consists of certain moneys received from persons engaged in the business of selling new or used motor vehicles, new or used motorcycles, trailers, multitrailers or recreational vehicles and from grants, gifts, bequests or awards arising out of the settlement or adjudication of a claim. The fund is not to be treated by the Auditor and Treasurer as part of the general revenue of the state. The fund is to be a special revolving fund paid out upon order of the Commissioner of Motor Vehicles based on the recommendation of the Dealer Recovery Fund control board created in this section, solely for the purposes specified in this section. The commissioner may use up to one percent of funds from the Dealer Recovery Fund for the administrative expenses of operating the Dealer Recovery Fund program.

(b) The Dealer Recovery Fund control board consists of the Commissioner of Motor Vehicles or his or her designee, the Attorney General’s designee representing the Office of Consumer Protection and one representative selected by the Motor Vehicle Dealer’s Advisory Board. The Commissioner of Motor Vehicles or his or her designee serves as chair and the board shall meet at least once a year during the month of July, and as required by the commissioner. The board may hear claims consistent only with the purposes specified in this section. The board may recommend rejection or acceptance of a claim, in full or in part. The recommendation of the board requires a majority vote of the board. The commissioner may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code that are necessary to effectuate the provisions of this section. The commissioner may employ the necessary staff needed to operate the program. The board may prorate the amount paid on claims when the aggregate amount of valid claims submitted would exceed 33 percent of the fund. However, claims presented by the Division of Motor Vehicles for taxes and fees shall be paid in full. The board may purchase
insurance at a cost not to exceed one percent of the fund to cover extraordinary or excess claims from the fund.

(c) Every applicant for either an original dealer license or renewal of an existing dealer license of the type enumerated in subsection (a) of this section shall pay, in addition to any other license fee, an annual Dealer Recovery Fund fee of $150. All dealers shall continue to maintain a surety bond as required by this article and the Dealer Recovery Fund payment unless exempt by one of the following requirements:

(1) Any dealer who, for the three years immediately preceding assessment of the fees, has not had a claim paid against their bond or against the Dealer Recovery Fund, whose license has not been suspended or revoked and who has not been assessed any civil penalties is not required to continue to keep the bond required by this article. However, no dealer can submit a claim against the fund unless it has contributed to the fund for at least three years.

(2) If the Dealer Recovery Fund reaches or exceeds the amount of $3,000,000 as of July 1, of any year, a dealer who meets the requirements of subdivision (1) of this subsection, is exempt from payment of the annual Dealer Recovery Fund fee. However, if the fund should, as of April 1 of any year, drop below $3,000,000, all dealers, regardless of any previous exemption shall pay the annual dealer recovery fee of $150. The exemption prescribed in subdivision (1) of this subsection remains in effect regardless of the status of the fund.

(d) The Dealer Recovery Fund control board may consider payment only after any dealer surety bond required pursuant to the provisions of section four of this article has been exhausted.

(e) When the fund reaches $250,000, the board shall consider claims for payment.
(f) Claims against the fund are not to be made for any act or omission which occurred prior to July 1, 2002.

(g) Claims for payment shall be submitted within six months of the date of sale or the date the division is made aware of the claim.

(h) The board shall pay claims in the following order:

1. Claims submitted by the Division of Motor Vehicles for unpaid taxes and fees;

2. Claims submitted by a retail purchaser of a vehicle from a dealer covered by the fund with an undisclosed lien or a retail purchaser of a vehicle from a dealer covered by the fund who finds that the lien on the vehicle traded in has not been satisfied by the selling dealer if the lien satisfaction was a condition of the purchase agreement;

3. Claims submitted by a motor vehicle dealer contributing to the fund, which has purchased a vehicle or vehicles from another dealer covered by the fund with an undisclosed lien;

4. Claims submitted by a retail purchaser of third party goods or services from a dealer covered by the fund for the unpaid charges when the dealer fails to pay the third party for the goods or services; or

5. Claims submitted by the Division of Motor Vehicles, a retail purchaser or a motor vehicle dealer contributing to the fund, not authorized by subdivisions (1) through (4) of this subsection, but otherwise payable under the bond described in section four of this article, may be considered for payment by the board up to the amount of $50,000 for each licensing year the West Virginia dealer that is the subject of the complaint did not maintain the bond: Provided, That the board may not consider claims submitted by or on behalf of a financial institution for money owed by a dealer upon a loan to a dealer or credit extended to a dealer.
that is secured by a lien upon the inventory of the dealer, commonly referred to as a floor planner.

(i) Payments under this section may not include payment for claims of punitive or exemplary damages, compensation for property damage other than to the vehicle, recompense for any personal injury or inconvenience, reimbursement for alternate transportation or payment for attorney fees, legal expenses, court costs or accrued interest.

(j) The maximum claim against the fund for any unpaid lien of a used vehicle is the unpaid balance of the lien up to the loan value of the vehicle as of the date of the sale or other transaction as shown by a generally accepted motor vehicle value guide. The maximum claim against the fund for any new or unused vehicle is the amount of the invoice less any amounts rebated or to be rebated to the dealer from the manufacturer. Payment is only to be made to a secured party who agrees to accept payment from the Dealer Recovery Fund and who accepts the payment in full settlement of any claims, and who releases the lien and the title, if applicable, prior to receiving payment. Any dealer who agrees to accept payment from the Dealer Recovery Fund shall release the title prior to receiving payment.

(k) On payment by the board to a claimant from the fund, the board shall immediately notify the licensee against whom a claim was paid and request full reimbursement within thirty days of notification. If a dealer fails to fully reimburse the board within the specified period of time, the commissioner shall immediately and without prior hearing revoke the dealer license of dealer against whom the claim was paid. No applicant with an unpaid claim is eligible for renewal or relicensure until the full amount of the reimbursement plus interest as determined by the board is paid to the fund. This section does not limit the authority of the commissioner to suspend, revoke or levy civil penalties against a dealer, nor does full repayment of the amount owed to the fund necessarily nullify or modify the effect of any action by the commissioner.
This section does not limit the right of any person to seek relief though civil action against any other person.

The provisions of this section do not apply to those class DTR dealers in the business of selling manufactured housing and covered by the state manufactured housing recovery fund established by the Division of Labor pursuant to a legislative rule.

CHAPTER 156

AN ACT to amend and reenact §17B-2-7a of the Code of West Virginia, 1931, as amended, relating to the Driver’s Licensing Advisory Board; requiring one member of the advisory board to be a board certified neurologist licensed to practice medicine in this state; reducing number of physicians or surgeons serving on advisory board from four to three; permitting current appointees to advisory board to continue to serve until successors have been appointed; authorizing Commissioner of Motor Vehicles to request opinion of advisory board; requiring the board to respond to requests of the commissioner for opinions; providing reimbursement for advisory board members for actual and necessary expenses; requiring reimbursement to be consistent with guidelines of Travel Management Office; and eliminating sunset provision for advisory board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.
§17B-2-7a. Driver’s Licensing Advisory Board.

(a) The Driver’s Licensing Advisory Board is hereby continued. The board shall consist of five members to be appointed by the Governor, by and with the advice and consent of the Senate, for terms of three years, commencing July 1, 2018: Provided, That as to the members first appointed, two shall be appointed for a term of three years, two shall be appointed for a term of two years and one shall be appointed for a term of one year: Provided, however, That members who last served as members of the board prior to the reenactment of this section by the Legislature in the 2018 Regular Session shall continue to serve until their successors have been appointed. A member shall continue to serve until his or her successor has been appointed. All vacancies occurring on the board shall be filled by the Governor, by and with the advice and consent of the Senate. One member of the board shall be an optometrist duly registered to practice optometry in this state, one member shall be a board certified neurologist who is licensed to practice medicine in this state, and the other three members of the board shall be physicians or surgeons duly licensed to practice medicine or surgery in this state. The Governor shall appoint persons qualified to serve on the board who, in his or her opinion, will best serve the work and function of the board.

(b) The board shall advise the Commissioner of Motor Vehicles as to vision standards and all other medical criteria of whatever kind or nature relevant to the licensing of persons to operate motor vehicles under the provisions of this chapter. The commissioner may, in her or his discretion, request the opinion of the board. The board shall, upon request, advise the Commissioner of Motor Vehicles as to the mental or physical fitness of an applicant for, or the holder of, a license to operate a motor vehicle. The board shall furnish the commissioner with all such medical standards, statistics, data, professional information and advice as he or she may reasonably request.
(c) The members of the board shall receive the same compensation as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties. Each member of the board shall be reimbursed for his or her actual and necessary expenses for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

CHAPTER 157

(S. B. 425 - By Senators Ferns, Cline and Plymale)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §8-22-25a of the Code of West Virginia, 1931, as amended, relating to removing sunset dates upon which members of the policemen’s or firemen’s pension and relief fund are eligible for and elect to commence participation in a deferred retirement option plan.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN’S PENSION AND RELIEF FUND;
FIREFMEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-25a. Deferred retirement option plans; authorization; requirements; limitations.
(a) A deferred retirement option plan (DROP) is a method to encourage retention of a worker beyond normal retirement age by permitting the worker to freeze retirement benefits at a certain time prior to ceasing work, to continue to work for a specified period, and to have retirement benefits which accrue while the employee continues working set aside in an account which the worker will then receive in a lump sum upon finally discontinuing work. The Legislature acknowledges that a DROP may be a useful and economical tool for retaining experienced and trained employees and for planning for turnovers in the workforce. Experience, however, dictates that a DROP may place a heavy financial burden on the employer and the affected retirement system, negating any positive benefit offered by the DROP if the DROP is not carefully planned to be economically favorable to the employer and revenue neutral for the affected retirement system while remaining attractive to the targeted employee.

(b) (1) The governing bodies of municipalities participating in policemen’s and firemen’s pension and relief funds pursuant to §8-22-16 through §8-22-28 of this code, are authorized to voluntarily offer DROPs. A participating municipality may design and establish a DROP to best meet the municipality’s needs so long as the DROP complies with federal law, the requirements set forth in this section and approved by the Municipal Pensions Oversight Board.

(2) Prior to approval by the Municipal Pensions Oversight Board, a municipality shall submit a proposed DROP to the board for analysis by the qualified actuary retained or employed by the board. The actuary shall examine the plan and, in light of the elements of the DROP and the actuarial projections of the impact of the DROP on the affected pension and relief fund, advise the board of the anticipated impact on the Municipal Pension and Relief Fund. The board shall seek to approve only those DROPs which, in the best judgment of the actuary, are designed to have no negative impact on the member’s pension and relief fund. The submitting municipality shall reimburse the board for actuarial costs of analyzing the plan.
(c) To be eligible to enter a DROP, the member of the policemen’s or firemen’s pension and relief fund must be in active employment and an active member of his or her pension and relief fund for at least six months beyond attaining eligibility for regular retirement as provided in §8-22-25 of this code and have received a satisfactory performance evaluation within the prior 12 months. The member may defer retirement for a period of not less than one nor more than five years but must complete the period by age 65. The member may elect to commence participation after July 1, 2011.

(d)(1) During the DROP participation period, the member shall continue with full-time employment in a covered position subject to the municipality’s requirements. A member’s retirement benefits are calculated as of the DROP participation date and a member may not accumulate additional retirement benefits during the DROP participation period. Upon beginning participation, the member is treated as retired and receiving benefits for purposes of the retirement system and for purposes of distributing premium tax proceeds through the Municipal Pensions Security Fund. During the participation period, the employer shall continue to make regular contributions to the employee’s pension and relief fund.

(2) Benefit payments are accumulated for the member in the pension and relief fund in an accumulation account during the DROP participation period. At the end of the participation period, the amount in the accumulation account owing to the member, plus interest not to exceed three and one-half percent, shall be paid to the member in a lump sum. Monthly retirement payments shall be paid directly to the member starting in the month following the end of the DROP participation period.

(3) A member may voluntarily terminate DROP participation early with 60 days’ advance notice. Deferred accumulated benefits will be paid with no interest for the DROP period and benefits payments will commence
following the early termination date. Covered employment must terminate before benefit distributions may be made. Should the employer wish to terminate the employment during the participation period, the member may terminate participation with 30 days’ notice and the deferred accumulation balance shall be paid with interest according to the DROP design: *Provided*, That if the employee is terminated for cause during the participation period, the member may terminate participation with 30 days’ notice and the deferred accumulation balance shall be paid without interest according to the DROP design.

(4) A member who is unable to continue working because of disability shall cease participation the first day of the month following notice of disability to the employer and the pension and relief fund. The accumulation account balance shall be paid to the member with no interest. No additional benefits are due the member on account of the disability.

(5) In the event of death of a member during DROP participation, the accumulation account of the member through the member’s date of death is payable to the member’s beneficiary or beneficiaries, with interest according to DROP design.

(6) A member entering the DROP is contractually obligated to terminate employment at the end of the DROP participation period. Failure to terminate voluntarily results in termination of employment for cause, except that a member who continues to work with the consent of the employer past the DROP participation period shall have all benefits frozen during the extension period and no additional benefit accumulates. During the period of time the member continues to work beyond the end of the DROP participation period with the consent of the employer, the employer shall continue to make regular contributions to the employee’s pension and relief fund. Regular retirement benefits will commence the month following eventual employment termination or death. The member’s accumulation account balance is frozen in value following the end of the DROP participation period.
(e) Pursuant to §4-1-23 of this code, the oversight board shall annually report to the Legislature’s Joint Committee on Pensions and Retirement on DROPs submitted to the board for approval and the status of any DROP that has been approved, including any experienced impact on an affected pension and relief fund.

CHAPTER 158

(S. B. 612 - By Senators Boley, Boso and Maynard)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §8-12-18 of the Code of West Virginia, 1931, as amended, relating to the sale of municipal property; allowing municipalities to sell real or personal property by using an Internet-based public auction service; and requiring notice of sale include notice of the time, terms, manner, and place of sale or the Internet-based public auction service to be used.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART VI. SALE, LEASE, OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale, lease, or disposition of other municipal property.

(a) Every municipality, municipal building commission created pursuant to §8-33-1 et seq. of this code, and
municipal development authority created pursuant to §7-12-1 et seq. of this code is authorized to sell, lease as lessor, or dispose of any of its real or personal property or any interest therein or any part thereof (other than a public utility which shall be sold or leased in accordance with the provisions of §8-12-17 of this code), as authorized in §1-5-1 et seq. of this code, or to the United States of America or any agency or instrumentality thereof, or to the state or any agency or instrumentality thereof, for a public purpose for an adequate consideration, without considering alone the present commercial or market value of such property.

(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, or by using an Internet-based public auction service, but before making any sale, notice of the time, terms, and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than $1,000 and under no circumstances shall the provisions of this section be construed as being applicable to any transaction involving the trading in of municipally owned property on the purchase of new or other property for the municipality and every municipality shall have plenary power and authority to enter into and consummate any trade-in transaction.

(c) In all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding 50 years. Every lease shall be authorized by resolution of the governing body of the municipality,
which resolution may specify terms and conditions which
must be contained in such lease: Provided, That before any
proposed lease is authorized by resolution of the governing
body, a public hearing on the proposed lease shall be held
by the governing body after notice of the date, time, place
and purpose of the public hearing has been published as a
Class I legal advertisement in compliance with the
provisions of §59-3-1 et seq. of this code and the publication
area for the publication shall be the municipality. The power
and authority granted in this subsection shall be in addition
to, and not in derogation of, any power and authority vested
in any municipality under any constitutional or other
statutory provision now or hereafter in effect.

CHAPTER 159

(Com. Sub. for H. B. 4289 - By Delegates Walters,
Pethtel, Anderson, Hamilton, Hollen and E. Evans)
(By Request of the West Virginia Municipal Pension
Oversight Board)

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §8-22-24 of the Code of West
Virginia, 1931, as amended, relating to disability pensions of
municipal employees; removing provision relating to
limitation of nonduty disability retirement; increasing amount
of income that may be earned before an offset of benefits is
required; and increasing that limit automatically when the
minimum wage increases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN’S PENSION AND RELIEF FUND;
FIREMEN’S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS

(a) The monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of §8-22-23(a) of this code is equal to 60 percent of the monthly salary being received by the member, at the time he or she is so disabled, or the sum of $500 per month, whichever is greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after July 1, 1981, under the provisions of §8-22-23a of this code, as a proximate result of service rendered in the performance of the member’s duties within such departments, the member’s monthly disability payment as provided in subsection (a) of this section may not, when aggregated with the monthly amount of state workers’ compensation, result in the disabled member receiving a total monthly income from the sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which the member held within the department at the time of the member’s disability. Lump sum payments of state workers’ compensation benefits are not considered for purposes of this subsection unless the lump sum payments represent commuted values of monthly state workers’ compensation benefits.

(c) Any member who has served on active duty with the armed forces of the United States as described in §8-22-27 of this code, whether prior or subsequent to becoming a member of a paid police or fire department covered by the provisions of this article, and who, on July 1, 1986, is receiving or thereafter receives a disability pension, shall receive in addition to the 60 percent or minimum $500 authorized in subsection (a) of this section, one additional percent for each year served in active military duty, up to a maximum of four additional percent.
(d) Beginning on and after April 1, 1991, the monthly sum to be paid to a member who becomes eligible for total disability incurred not in the line of duty is the monthly benefit provided in subsection (a) of this section: Provided, that for any person receiving benefits under this subsection who is self-employed or employed by another, there shall be offset against the benefits the amount of $1 for each $3 of income derived from self-employment or employment by another: Provided, however, that a person receiving disability benefits must file a certified copy of his or her tax return on or before April 15 of each year to demonstrate either unemployment or income earned from self-employment or employment by another: Provided further, that there is no offset of benefit for any income derived from self-employment or employment by another when the annual total amount of the income is $18,200 or less.

(e) The $18,200 limit in subsection (d) of this section shall be automatically increased when the minimum wage, as provided in §21-5C-2 of this code, increases, by the same percentage of the increase in the minimum wage.

CHAPTER 160

(H. B. 4324 - By Delegates Howell, Statler, Hill, Martin, Butler, Shott, Moore, Criss, Paynter, Foster and Pack)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]
which he or she seeks to become a member of the paid fire department; and that if there are not enough eligible applicants to certify a list of three, then the appointing officer may appoint a qualified individual to fill the position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-17. Form of application; age and residency requirements; exceptions.

(a) The Firemen’s Civil Service Commission in each municipality shall require individuals applying for admission to any competitive examination provided for under the civil service provisions of this article or under the rules of the commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

(1) His or her full name, residence, and post-office address;

(2) His or her United States citizenship, age, and the place and date of his or her birth;

(3) His or her state of health, and his or her physical capacity for the public service;

(4) His or her business and employments and residences for at least three previous years; and

(5) Any other information reasonably required, touching upon the applicant’s qualifications and fitness for the public service.

(b) Blank forms for the applications shall be furnished by the commission, without charge, to all individuals requesting the same.
(c) The commission may require, in connection with the application, certificates of citizens, physicians, and others, having pertinent knowledge concerning the applicant, as the good of the service requires.

(d) Except as provided in subsections (e) and (f) of this section, the commission may not accept an application for original appointment if the individual applying is less than 18 years of age or more than 35 years of age at the date of his or her application.

(e) If any applicant formerly served upon the paid fire department of the municipality to which he or she makes application for a period of more than one year, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant within a period of two years next preceding the date of his or her application, and at the time of his or her application resides within the corporate limits of the municipality in which the paid fire department to which he or she seeks appointment by reinstatement is located, then the individual is eligible for appointment by reinstatement in the discretion of the Firemen’s Civil Service Commission, even though the applicant is over the age of 35 years, and the applicant, providing his or her former term of service so justifies, may be appointed by reinstatement to the paid fire department without a competitive examination. The applicant shall undergo a medical examination; and if the individual is so appointed by reinstatement to the paid fire department, he or she shall be the lowest in rank in the department next above the probationers of the department and may not be entitled to seniority considerations.

(f) If an individual is presently employed by one paid fire department and is over the age of 35, he or she may make an application to another paid fire department if:

(1) The paid fire department to which he or she is applying is serving a municipality that has elected to participate in the West Virginia Municipal Police Officers and Firefighters
Retirement System created in §8-22A-1 et seq. of this code: Provided, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and prior employment service may not be transferred to the West Virginia Municipal Police Officers and Firefighters Retirement System; or

(2) The paid fire department to which he or she is applying is serving a municipality that has elected to participate in the West Virginia Public Employees Retirement System created in §5-10-1 et seq. of this code: Provided, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and prior employment service may not be transferred to the West Virginia Public Employees Retirement System, except for individuals and their prior employment service already credited to them in the West Virginia Public Employees Retirement System pursuant to §5-10-1 et seq. of this code.

(g) Individuals who are authorized to apply to a paid fire department pursuant to subsection (f) of this section shall be in the lowest rank of the department and are not entitled to seniority considerations.

(h) Notwithstanding charter provisions to the contrary, any applicant for original appointment need not be a resident of the municipality or the county in which he or she seeks to become a member of the paid fire department.

§8-15-20. Appointments from list of eligible applicants; special examinations for electricians or mechanics.

(a) Every position, unless filled by promotion, reinstatement, or reduction, shall be filled only in the manner specified in this section. The appointing officer shall notify the Firemen’s Civil Service Commission of any vacancy in a position which he or she desires to fill, and shall request the certification of eligible applicants. The commission shall immediately certify, from the eligible list, the names of the
three individuals on the eligible list who received the highest averages at preceding competitive examinations held under the civil service provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing officer shall, with sole reference to the relative merit and fitness of the candidates, make an appointment from the three certified names: Provided, That if the appointing officer objects, to the commission, to one or more of these individuals, for any of the reasons stated in §8-15-19 of this code, and the objection is sustained by the commission, after a public hearing along the lines of the hearing provided for in §8-15-19 of this code, if a hearing is requested, the commission shall strike the name of the individual from the eligible list, and certify the next highest name for each individual stricken. As each subsequent vacancy occurs, in the same or another position, precisely the same procedure shall be followed: Provided, however, That after any name has been rejected three times for the same or another position in favor of a name or names below it on the same list, the name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall, nevertheless, be made separately and in accordance with the provisions of this section. When an appointment is made under the provisions of this section it shall be, in the first instance, for the probationary period of six months, as provided in §8-15-16 of this code: Provided further, That in the event any position as an electrician or mechanic is to be filled in any paid fire department, then the examinations to be given to applicants for either position shall be drawn to test only the qualifications of the applicants in regard to their ability as electricians or mechanics, the examinations to be special examinations.

(b) If there are not enough eligible applicants to certify a list of three, then the appointing officer may appoint a qualified individual to fill the position.
AN ACT to amend and reenact §8-13-25 of the Code of West Virginia, 1931, as amended, relating to oath by municipal official certifying list of delinquent business and occupation taxes; and providing that official is not subject to penalties for disclosure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. TAXATION AND FINANCE.


(a) Notwithstanding the prohibition on disclosure set forth in §11-10-5d(a) of this code, the official designated to conduct publication of delinquent business and occupation taxes provided for by §8-13-24 of this code shall prepare the delinquent list in a manner set forth in the ordinance, so long as it is consistent with the requirements and limitations set forth herein. The ordinance shall require the designated code official adopt policies and procedures designed to verify each delinquency prior to publication.

(b) The delinquent list may include the name of the delinquent taxpayer and the year or years in which the delinquency arises.

(c) For each delinquent list published by the municipality, and prior to the publication, the official designated in the ordinance to oversee or conduct the publication shall take an oath, to be included in or attached
to the delinquent list, certified by the city clerk or some
other person duly authorized to administer oaths, in form
and effect as follows:

“I, ______________________ (municipal official title)
of _________________, do swear, to the best of my
knowledge and belief, that the foregoing list of delinquent
business and occupation taxes to be published on
_____________, is complete and accurate, and, as of
_____________ (date of certification), that I have not
received payment from any of the entities listed for the
delinquent amounts included in the list.”

(d) Nothing in this section shall be construed to subject
the official designated to conduct publication of delinquent
Business and Occupation Taxes under this section, or his or
her representative or designee, to the penalties set forth in
§11-10-5d(c) or any other penalty set forth in §11-10-5d et
seq. of this code.

CHAPTER 162

(H. B. 4627 – By Delegate Moore)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §8-21-8 of the Code of West
Virginia, 1931, as amended, relating to providing a limitation
on the eminent domain authority of a municipal park board by
requiring the approval of the governing body of that
municipality in instances where it is sought to be exercised.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. BOARD OF PARK AND RECREATION
COMMISSION.
§8-21-8. Purchase, lease or condemnation of real property.  

1. The board is hereby granted the power and authority to acquire in its name or in the name of the city by purchase, lease, or by exercise of the power of eminent domain, or otherwise, such land or lands as it shall determine to be necessary, appropriate, convenient or incidental to the establishment, construction, improvement, extension, development, maintenance or operation of a system of public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and other public park and recreational facilities for the city, whether of a like or different nature: Provided, That any such acquisition by the board made by exercise of the power of eminent domain must be approved by a majority vote of the governing body of that municipality. Approval by the governing body must be granted as to each specific parcel or tract of land to be acquired by power of eminent domain.

CHAPTER 163
(S. B. 143 - By Senator Sypolt)

[Passed March 5, 2018; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2018.]  

AN ACT to amend and reenact §20-2-19 of the Code of West Virginia, 1931, as amended, relating to marking traps with a Division of Natural Resources identification number.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

All traps used for taking game or fur-bearing animals shall be marked with a durable plate or tag, attached to the snare, trap, or trap chain, bearing either the name and address of the owner of the trap or the Division of Natural Resources identification number of the owner of the trap.

CHAPTER 164

(S. B. 346 - By Senators Maynard and Cline)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §20-2B-7 of the Code of West Virginia, 1931, as amended, relating to permitting full-time, nonresident students attending an in-state college or university to purchase lifetime resident statewide hunting, trapping, trout fishing, and fishing licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing, and trapping licenses created.

(a) Pursuant to §20-2B-3 of this code, the director may issue the following lifetime hunting, fishing, and trapping licenses and for the lifetime of the licensee, the lifetime licenses serve in lieu of the equivalent annual license: Lifetime resident statewide hunting and trapping license; lifetime resident combination statewide hunting, fishing, and trapping license; lifetime statewide fishing license; and lifetime resident trout fishing license.

(b) The director shall propose a rule for legislative approval in accordance with §29A-3-1 et seq. of this code,
setting the fees for the lifetime licenses. The rule shall provide that the fee for any resident who has not reached his or her second birthday shall be one half of the adult fee set under the rule. The fees for lifetime licenses shall be 23 times the fee for the equivalent annual licenses or stamps.

CHAPTER 165

(Com. Sub. for S. B. 347 - By Senator Maynard)

[Passed March 8, 2018; in effect ninety days from passage.] [Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §20-7-11, §20-7-12, §20-7-13, §20-7-14, §20-7-18, §20-7-18d, and §20-7-19 of the Code of West Virginia, 1931, as amended, all relating to the operation of motorboats; defining the term “state of principal operation”; establishing a fee schedule for motorboat registration; establishing motorboat numbering, lighting, fire extinguishers, engine bilges, and flotation device requirements; increasing the financial amount of property damage before certain accidents need to be reported; clarifying the requirements for the operation of personal watercrafts; limiting the hours during the day water skiing and surfboarding are permitted; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-11. Motorboats and other terms defined.

As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:
(1) “Vessel” means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

(2) “Motorboat” means any vessel propelled by an electrical, steam, gas, diesel, or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto;

(3) “Owner” means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

(4) “Commissioner” means the Commissioner of the Division of Motor Vehicles;

(5) “Director” means the Director of the Division of Natural Resources;

(6) “Personal watercraft” means a small vessel of less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel. For purposes of this article, the term “personal watercraft” also includes “specialty prop-crafts” which are vessels similar in appearance and operation to a personal watercraft but which are powered by an outboard motor or propeller driven motor; and

(7) “State of principal operation” means the state in whose waters a vessel is or will be used, operated,
navigated, or employed more than on the waters of any other state during a calendar year.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

Every motorboat, as defined in this section, operating upon public waters whose principal operation is within the territorial limits of this state shall be numbered as provided in this section:

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the commissioner on forms approved by the Division of Motor Vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by the appropriate fee for a three-year registration period if the motorboat is propelled by a motor of three or more horsepower or 70 or more pounds of thrust. There is no fee for motorboats propelled by motors of less than three horsepower or less than 70 pounds of thrust. The fee schedule for a three-year registration period is as follows, and may be prorated by the commissioner for periods of less than three years:

(1) Class A motorboats less than 16 feet in length, $30;
(2) Class 1 motorboats 16 feet or over and less than 26 feet in length, $45;
(3) Class 2 motorboats 26 feet or over and less than 40 feet in length, $60; and
(4) Class 3 motorboats 40 feet in length or over, $75.

All fees, including those received under §20-7-12(b) of this code, shall be deposited in the State Treasury. All
moneys deposited pursuant to this section and credited to
the Division of Motor Vehicles and 50 percent of all fees
collected thereafter shall be credited to the State Road Fund.
The remaining 50 percent shall be credited to the Division
of Natural Resources and shall be used and paid out upon
order of the director solely for the enforcement and safety
education of the state boating system.

Upon receipt of the application in approved form, the
commissioner shall enter the application upon the records
of the division and issue to the applicant a number awarded
to the motorboat and the name and address of the owner.
The owner shall paint on or attach to each side of the bow
of the motorboat the identification number in the manner
prescribed by rules of the commissioner in order that it is
clearly visible. The owner shall maintain the number in
legible condition. The certificate of number shall be pocket
size and shall be available at all times for inspection on the
motorboat for which it is issued, whenever the motorboat is
in operation.

(b) To permit a motorboat sold to a purchaser by a dealer
to be operated pending receipt of the certificate of number
from the commissioner, the commissioner may deliver to
dealers temporary certificates of number to in turn be issued
to purchasers of motorboats, upon application by the dealer
and payment of $1 for each temporary certificate. Every
person who is issued a temporary certificate by a dealer
shall, under the provisions of §20-7-12(a) of this code, apply
for a certificate of number no later than 10 days from the
date of issuance of the temporary certificate. A temporary
certificate expires upon receipt of the certificate, upon
rescission of the contract to buy the motorboat in question,
or upon the expiration of 40 days from the date of issuance,
whichever occurs first. It is unlawful for any dealer to issue
any temporary certificate knowingly containing any
misstatement of fact or knowingly to insert any false
information on the face of the temporary certificate. The
commissioner may by rule prescribe additional
requirements upon the dealers and purchasers that are consistent with the effective administration of this section.

(c) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the 60-day reciprocity period provided for in 33 C.F.R. § 173.17 et seq. once its state of principal operation changes to the State of West Virginia. The recordation shall be in the manner and pursuant to procedure required for the award of a number under §20-7-12(a) of this code, except that the commissioner shall not issue an additional or substitute number.

(d) If the ownership of a motorboat changes, the new owner shall file a new application form with the required fee with the commissioner who shall award a new certificate of number in the same manner as provided for in an original award of number.

(e) If an agency of the United States government has in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the Division of Motor Vehicles shall be in conformity with the federal system.

(f) The license is valid for a maximum period of three years. If at the expiration of that period ownership has remained unchanged, the commissioner shall, upon application and payment of the proper fee, grant the owner a renewal of the certificate of number for an additional three-year period.

(g) The owner shall furnish the commissioner notice of the transfer of any part of an interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to §20-7-12(a) and §20-7-12(b) of this code or of the destruction or abandonment of the motorboat within 15
days of the transfer of interest, destruction, or abandonment. The transfer, destruction, or abandonment shall terminate the certificate of number for the motorboat, except that in the case of a transfer of a part interest which does not affect the owner’s right to operate the motorboat, the transfer shall not terminate the certificate of number.

(h) Any holder of a certificate of number shall notify the commissioner within 15 days if his or her address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the commissioner with his or her new address. The commissioner may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(i) An owner shall not paint, attach or otherwise display a number other than the number awarded to a motorboat or granted reciprocity pursuant to this article on either side of the bow of the motorboat.

(j) The commissioner shall on or before August 30 of each year forward to the assessor of each county a list of the names and addresses of all persons, firms, and corporations owning vessels and operating the vessels or other boats registered with the commissioner under the provisions of this article. In furnishing this information to each county assessor, the commissioner shall include information on the make and model of the vessels and other equipment required to be registered for use by the owner or operator of the boats under the provisions of this article: Provided, That the commissioner is not required to furnish the information to the assessor if the true and actual value of the vessel does not exceed $500 or the cost of the motor does not exceed $250.

(k) No person may operate an unlicensed motorboat upon any waters of this state without first acquiring a certificate of number or license as required by law.
§20-7-13. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.

(a) Motorboats subject to the provisions of this article shall be divided into four classes.

1. Class A includes motorboats less than 16 feet in length;
2. Class 1 includes motorboats 16 feet or over and less than 26 feet in length;
3. Class 2 includes motorboats 26 feet or over and less than 40 feet in length;
4. Class 3 includes motorboats 40 feet or over.

(b) Except as provided in §20-7-18d of this code, Class A, Class 1, Class 2, and Class 3 motorboats in all weathers from sunset to sunrise shall carry and exhibit the following lights when under way, no other lights which may be mistaken for those prescribed shall be exhibited.

1. Every motorboat of Class A and Class 1 shall carry the following lights:
   - A bright white light aft to show all around the horizon;
   - A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

2. Every motorboat of Class 2 and Class 3 shall carry the following lights:
   - A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each
side of the vessel; namely, from right ahead to two points abaft the beam on either side;

(B) A bright white light aft to show all around the horizon and higher than the white light forward;

(C) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

(3) When propelled by sail alone, motorboats of Class A and Class 1 shall exhibit the combined lantern but not the white light aft. When propelled by sail alone, motorboats of Class 2 and Class 3 shall exhibit the colored side lights, suitably screened, but not the white lights. Motorboats of all classes when propelled by sail alone, or manually propelled vessels, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(4) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word “visible” in this subdivision, when applied to lights, shall mean visible on a dark night with clear atmosphere.

(5) When propelled by sail and machinery any motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.
(c) Any vessel may carry and exhibit the lights as contained in the federal navigation laws and rules promulgated by the United States Coast Guard pursuant to 33 C.F.R. Chapter I. as authorized by 46 U.S.C. §4302, in lieu of the lights required by §20-7-13(b) of this code.

(d) Every motorboat of Class A, Class 1, Class 2, or Class 3 shall be provided with an efficient whistle or other sound-producing mechanical appliance.

(e) Every motorboat of Class 2 or Class 3 shall be provided with an efficient bell.

(f) Every vessel shall have on board the following personal flotation devices as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 et seq. as authorized by 46 U.S.C. §4302: (1) At least one immediately accessible throwable personal flotation device, except motorboats or vessels less than 16 feet and except as provided in 33 C.F.R §175.17 2017 as authorized by 46 U.S.C §4302; (2) At least one readily accessible wearable personal flotation device per person on board; and (3) Except, that every motorboat carrying passengers for hire shall have on board readily accessible wearable personal flotation devices according to rules that may be promulgated by the director in accordance with the provisions of §29A-3-1 et. seq. of this code.

(g) Every motorboat shall be equipped with the number, size, and type of fire extinguishers capable of promptly and effectually extinguishing burning gasoline, according to rules that may be promulgated by the director in accordance with the provisions of §29A-3-1 et seq. of this code. The fire extinguishers shall be readily accessible and in condition for immediate and effective use.

(h) The provisions of §20-7-13(d), §20-7-13(e), §20-7-13(g) and §20-7-13(f)(1) of this code shall not apply to motorboats while competing in any race conducted pursuant to §20-7-20 of this code or, if such boats be designed and
intended solely for racing while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrester, backfire trap, or other similar device according to rules that may be promulgated by the director in accordance with the provisions of §29A-3-1 et seq. of this code.

(j) Every motorboat and every vessel shall be equipped with the means to properly and efficiently ventilate the bilges of the engine and fuel tank compartments, except open boats, according to rules that may be promulgated by the director in accordance with the provisions of §29A-3-1 et seq. of this code.

(k) The director may promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States Coast Guard.

(l) The director may promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code, pilot rules in conformity with the pilot rules contained in the federal navigation laws, or the navigation rules promulgated by the United States Coast Guard for the operation of vessels on the waters of this state.

(m) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

§20-7-14. Motorboats exempt from numbering.

A motorboat shall not be required to be numbered under this article if it is:
(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state: Provided, That the boat shall be registered in the state of principal operation;

(2) A motorboat from a country other than the United States temporarily using the waters of this state; or

(3) A motorboat used exclusively for racing while participating in races, and the preparation therefor, which have been authorized pursuant to the provisions of §20-7-20 of this code.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident, or casualty; accident reports.

(a) No person shall operate a motorboat, jet ski, or other motorized vessel or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate any motorboat, jet ski, or other motorized vessel, or manipulate any water skis, surfboard, or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(c) The operator of a vessel involved in a collision, accident, or other casualty, so far as he or she can do so without serious danger to his or her own vessel, crew, and any passengers, to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty. The operator shall also give his or her name, address, and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.
(d) The operator of a vessel involved in a collision, accident, or other casualty shall file an accident report with the director if the incident results in a loss of life, in a personal injury that requires medical treatment beyond first aid or in excess of $2,000 damage to a vessel or other property. The report shall be made on such forms and contain information as prescribed by the director. Upon a request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to the official or agency.

§20-7-18d. Operation of personal watercrafts.

(a) No person under the age of 15 may operate a personal watercraft on the waters of this state: Provided, That a person that has attained the age of 12 may operate a personal watercraft if a person 18 years of age or older is aboard the personal watercraft.

(b) A person may not operate a personal watercraft unless each person on board or being towed behind is wearing a personal flotation device defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 et seq. as authorized by 46 U.S.C. §4302. Inflatable personal flotation devices do not meet the requirements of this section.

(c) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach the lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel.

(d) A person may not operate a personal watercraft at any time between the hours of sunset and sunrise. However, an agent or employee of a fire rescue, emergency rescue unit, or law-enforcement division is exempt from this subsection while performing his or her official duties.
(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property constitute reckless operation of a vessel and include, but are not limited to:

1. Weaving through congested traffic;

2. Jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed or restricted;

3. Becoming airborne or completely leaving the water while crossing the wake of another vessel within 100 feet of the vessel creating the wake;

4. Operating at a greater than slow or no-wake speed within 100 feet of an anchored or moored vessel, shoreline, dock, pier, swim float, marked swim areas, swimmers, surfers, persons engaged in angling, or any manually powered vessel;

5. Operating contrary to navigation rules including following too closely to another vessel, including another personal watercraft. For the purpose of this subdivision, “following too closely” is construed as a proceeding in the same direction and operating at a speed in excess of 10 miles per hour within 100 feet to the rear or 50 feet to the side of another vessel which is underway, unless said vessels are operating in a narrow channel, in which case the personal watercraft may operate at the speed and flow of the other vessel traffic within the channel.


(a) No person shall operate a vessel on any waters of this state towing a person or persons on water skis, surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity between sunset and sunrise.
(b) The provisions of §20-7-19(a) of this code do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under §20-7-20 of this code.

c) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, surfboard, or similar device may be affected or controlled in such a way as to cause water skis, surfboard, or similar device, or any person thereon, to collide with or strike against any object or person.

CHAPTER 166

(Com. Sub. for S. B. 348 - By Senator Maynard)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §20-7-1d and §20-7-1f of the Code of West Virginia, 1931, as amended, all relating to awarding service weapons to natural resources police officers and special natural resources police officers upon retirement; modifying terms to reference weapons rather than revolvers; modifying provisions relating to the disposal of service weapons when they are replaced due to routine wear; exempting weapons replaced due to routine wear from surplus property provisions; authorizing the sale of service weapons that are being replaced due to routine wear to special natural resources police officers at fair market value; and providing that the provisions of these sections do not apply to weapons obtained through the federal donation program operated by the West Virginia State Agency for Surplus Property.

Be it enacted by the Legislature of West Virginia:
ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1d. Awarding service weapon upon retirement; disposal of service weapon when replaced due to routine wear; and furnishing uniform for burial.

(a) Upon the retirement of any full-time salaried natural resources police officer, the chief natural resources police officer shall award to the retiring natural resources police officer his or her service weapon, without charge, upon determining:

(1) That the natural resources police officer is retiring honorably with at least 25 years of recognized law-enforcement service as determined by the chief natural resources police officer; or

(2) That the natural resources police officer is retiring with less than 25 years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of §20-7-1d(a) of this code, the chief natural resources police officer may not award a service weapon to any natural resources police officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief natural resources police officer, constitutes a danger to any person or the community.

(c) The disposal of law-enforcement service weapons, when replaced due to routine wear, does not fall under the jurisdiction of the agency for surplus property, within the Purchasing Division of the Department of Administration. The chief natural resources police officer may offer these surplus weapons for sale to any active or retired Division of Natural Resources law-enforcement officer, at fair market value, with the proceeds from any sales used to offset the cost of the new weapons.
(d) Upon the death of any current or honorably retired natural resources police officer, the chief natural resources police officer shall, upon request of the deceased officer’s family, furnish a full uniform for burial of the deceased officer.

(e) Notwithstanding the foregoing, this section does not apply to weapons obtained through the federal donation program operated by the West Virginia State Agency for Surplus Property.

§20-7-1f. Awarding service weapon to special natural resources police officers upon retirement; disposal of service weapon when replaced due to routine wear; furnishing uniform for burial.

(a) Upon the retirement of any special natural resources police officer selected and appointed pursuant to §20-7-1 of this code, the chief of the officer’s section shall award to the retiring special natural resources police officer his or her service weapon, without charge, upon determining:

(1) That the special natural resources police officer is retiring honorably with at least 25 years of recognized special law enforcement service as determined by the chief natural resources police officer; or

(2) That the special natural resources police officer is retiring with less than 25 years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of §20-7-1f(a) of this code, the section chief may not award a service weapon to any special natural resources police officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief natural resources police officer constitutes a danger to any person or the community.
(c) Upon the death of any current or honorably retired special natural resources police officer, the respective chief shall, upon request of the deceased officer’s family, furnish a full uniform for burial of the deceased officer.

(d) The disposal of special natural resources police officer service weapons, when replaced due to routine wear, does not fall under the jurisdiction of the agency for surplus property, within the Division of Purchasing of the Department of Administration. The chief of the section of Parks and Recreation and the chief of the Wildlife Resources Section of the Division of Natural Resources may offer these surplus weapons for sale to any active or retired special natural resources police officer, at fair market value, with the proceeds from any sales used to offset the cost of the new weapon.

(e) Notwithstanding the foregoing, this section does not apply to weapons obtained through the federal donation program operated by the West Virginia State Agency for Surplus Property.

CHAPTER 167

(Com. Sub. for S. B. 438 - By Senators Maynard, Prezioso, Beach, Plymale and Jeffries)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §29-22-18e of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-15-16d, all relating to authorizing additional bonds for state park projects; requiring certain deposits from the State Excess Lottery Revenue Fund; providing for allocation of certain funds not needed for debt
service to state park improvements; authorizing the Economic Development Authority to issue certain revenue bonds; providing limitations on bond issuance; creating a special revenue account; and providing for allocation of bond proceeds.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18e. Increase in allocation to State Park Improvement Fund from State Excess Lottery Revenue Fund to permit the issuance of bonds for improvements to Cacapon Resort State Park and Beech Fork State Park.

Notwithstanding any provision of §29-22-18a(d) of this code to the contrary, the deposit of $5 million into the State Park Improvement Fund is for the fiscal year beginning July 1, 2012, only. For the fiscal year beginning July 1, 2013, and each fiscal year through the fiscal year ending June 30, 2018, in lieu of the deposits required under §29-22-18a(d)(7) of this code, the commission shall first deposit an amount equal to the certified debt service requirement, not to exceed $3 million in any one fiscal year, into the Cacapon and Beech Fork State Park Lottery Revenue Debt Service Fund created in §31-15-16b of this code, to be used in accordance with the provisions of §31-15-16b of this code, and second, deposit $5 million into the State Park Improvement Fund, established in §29-22-18a(d) of this code, to be used in accordance with the provisions of §29-22-18a(d) of this code. For the fiscal year beginning July 1, 2018, and each fiscal year thereafter, in lieu of the deposits required under §29-22-18a(d)(7) of this code, the commission shall first: (1) Deposit an amount equal to the certified debt service requirement, not to exceed $2.1 million in any one fiscal year, into the Cacapon and Beech Fork State Park Lottery Revenue Debt Service Fund created in §31-15-16b of this code, to be used in accordance with the provisions of §31-15-16b of this code; and (2) deposit an amount equal to
the certified debt service requirement, not to exceed $5.9 million in any one fiscal year, into the State Parks Lottery Revenue Debt Service Fund created in §31-15-16d of this code and if the certified debt service requirement is less than $5.9 million, deposit an amount equal to the difference between the certified debt service requirement and $5.9 million into the State Park Improvement Fund, established in §29-22-18a(d) of this code, to be used in accordance with the provisions of §29-22-18a(d) of this code: Provided, That the amounts deposited into the State Park Improvement Fund shall not exceed $5 million in aggregate in any one fiscal year.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16d. Lottery revenue bonds for state park projects.

(a)(1) The Economic Development Authority shall, in accordance with the provisions of this article, issue revenue bonds, in one or more series, from time to time, to pay for all or a portion of the cost of constructing, equipping, improving, or maintaining capital improvement projects under this section or to refund the bonds issued for such purposes, at the discretion of the authority. The principal amount of the bonds issued under this section shall not exceed, in the aggregate principal amount, $80 million. Any revenue bonds issued on or after the effective date of this section which are secured by lottery proceeds shall mature at a time or times not exceeding 30 years from their issuance dates. The principal of, and the interest and redemption premium if any on, the bonds shall be payable solely from the State Parks Lottery Revenue Debt Service Fund established in this section.

(2) There is hereby created in the State Treasury a special revenue fund named the State Parks Lottery Revenue Debt Service Fund into which shall be deposited those amounts specified in §29-22-18e of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest, and redemption
premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The authority may further provide in the trust agreement for priorities on the revenues paid into the State Parks Lottery Revenue Debt Service Fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The State Parks Lottery Revenue Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section. On or prior to May 1 of each year, commencing upon issuance of the bonds, the authority shall certify to the State Lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the State Parks Lottery Revenue Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

(3) After the authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the State Parks Lottery Revenue Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(b) The authority shall expend the bond proceeds, net of issuance costs, reserve funds, and refunding costs, for certified capital improvement projects at any state park. The Division of Natural Resources shall submit a proposed list of capital improvement projects to the Governor. Thereafter, the Governor shall certify to the authority at any time prior to the issuance of bonds under this section, a list of those capital improvement projects at state parks that will
receive funds from the proceeds of bonds issued pursuant to this section. At any time prior to the issuance of bonds under this section, the Governor may certify to the authority a revised list of capital improvement projects at state parks that will receive funds from the proceeds of bonds issued pursuant to this section. The Governor shall consult with the Division of Natural Resources prior to certifying a revised list of capital improvement projects to the authority.

(c) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be special obligations of the authority, payable solely from the property, revenues, or other sources of, or available to, the authority pledged therefor.

(d) The bonds and the notes shall be authorized by the authority pursuant to this section, and shall be secured, be in such denominations, may bear interest at such rate or rates, taxable or tax-exempt, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment and at such place or places and such time or times, and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the price the authority determines. The bonds and notes shall be executed by manual or facsimile signature by the chairman of the board, and the official seal of the authority or a facsimile thereof shall be affixed to or printed on each bond and note and attested, manually or by facsimile signature, by the secretary of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes, or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until such delivery; and, in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.
CHAPTER 168

(Com. Sub. for S. B. 451 - By Senators Maynard, Clements, Ferns, Gaunch, Maroney, Rucker, Smith, Swope, Weld and Cline)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-9 of said code, all relating generally to hunting and fishing; authorizing the use of certain technologies for hunting coyote, fox, racoon, opossum, and skunk; regulating firearm use and possession in certain places; prohibiting the use of a drone or unmanned aircraft to wound, harass, or transport wildlife; allowing certain persons to carry firearms, including handguns, rifles, or shotguns, for self-defense with certain exceptions; creating a misdemeanor and providing penalties for catching, taking, killing or attempting to catch, take, or kill any fish by any means within 200 feet of agency personnel stocking fish into public waters; removing a limitation on the starting time for Sunday hunting on private lands with the landowner’s permission; requiring crossbows and bows be cased when in a motor vehicle during certain times; prohibiting nocked bows from being transported in a motor vehicle; providing that the misdemeanor offenses of hunting, trapping, or fishing on the lands of another person, entering posted lands, hunting on private land on Sunday without written permission, and destroying posted land signs will all carry penalties equivalent to the penalty for the offense of criminal trespass; providing increased penalties upon conviction of second and subsequent violations of certain natural resources laws; permitting Sunday hunting on public
lands; permitting noodling, or fishing for catfish using one’s bare hands; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

(a) Except as authorized by the director or by law, it is unlawful at any time for any person to:

1. Shoot at any wild bird or wild animal unless it is plainly visible;

2. Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;

3. Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging, or active illumination while hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal: Provided, That it is lawful to hunt or take coyote, fox, raccoon, opossum, or skunk by the use of artificial light or night vision technology, including image intensification, thermal imaging, or active illumination. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $100 nor more than $500, and shall be confined in jail for not less than 10 days nor more than 100 days;

4. Hunt, take, kill, wound, harass, or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile, or other land conveyance, or from a motor-driven water conveyance;

5. Use a drone or other unmanned aircraft to hunt, take, wound, harass, transport, or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd
any wild bird or wild animal for the purposes of hunting, trapping, or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt, or kill by seine, net, bait, trap, or snare or like device a wild turkey, ruffed grouse, pheasant, or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas, or state rail trails with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;

(B) A person hunting or taking unprotected species of wild animals, wild birds, and migratory wild birds during the open season, in the open fields, open water, and open marshes of the state where hunting is lawful;

(C) A person carrying a firearm pursuant to §20-2-6 of this code;

(D) A person carrying a firearm for self-defense who is not prohibited from possessing firearms under state or federal law; or

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: Provided, That this exception does not apply to an uncased rifle or shotgun carried specifically in state park or state forest recreational facilities and marked trails within state park or state forest borders.
(10) Possess a loaded rifle or shotgun, a bow with a
nocked arrow, or crossbow with a nocked bolt, in or on any
vehicle or conveyance, or its attachments. A rifle or shotgun
with cartridges that have not been removed or a magazine
that has not been detached is considered loaded. For the
purposes of this section, a rifle or shotgun whose magazine
readily detaches is considered unloaded if the magazine is
detached and no cartridges remain in the rifle or shotgun
itself;

(11) Carry any unloaded firearm, bow, or crossbow in
or on any vehicle or conveyance, or its attachments, that is
not in a case or taken apart and securely wrapped between
30 minutes after sunset until 30 minutes before sunrise:
Provided, That the time periods for carrying unloaded and
uncased firearms or crossbows are extended for one hour
after sunset as established in this subdivision, if a person is
transporting or transferring the firearms or crossbows to or
from a hunting site, campsite, home, or other abode;

(12) Hunt, catch, take, kill, injure, or pursue a wild
animal or wild bird with the use of a ferret;

(13) Buy raw furs, pelts, or skins of fur-bearing animals
unless licensed to do so;

(14) Catch, take, kill, or attempt to catch, take, or kill
any fish by any means other than by rod, line, and hooks
with natural or artificial lures, unless otherwise authorized
by the director: Provided, That snaring of any species of
sucker, carp, fallfish, and creek chub and catching catfish
by hand are lawful if done by a holder of a valid license
issued pursuant to §20-2-1 et seq. of this code or is
exempted from licensure pursuant to §20-2-27 or §20-2-28
of this code;

(15) Employ, hire, induce, or persuade, with money,
things of value, or by any means, any person to hunt, take,
catch, or kill any wild animal or wild bird except those
species in which there is no closed season; or to fish for,
catch, take, or kill any fish, amphibian, or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport, possess, or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and its regulations;

(17) Kill, take, catch, sell, transport, or have in his or her possession, living or dead, any wild bird other than a game bird, including the plumage, skin, or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), and cowbird (Molothrus ater), which may be killed at any time;

(18) Use dynamite, explosives, or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony, and upon conviction thereof, shall be fined not more than $500 or confined for not less than six months nor more than three years, or both fined and confined;

(19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take, or attempt to take any wildlife except as otherwise provided in §20-2-5g and §20-2-42w of this code;

(21) Take or attempt to take turkey, bear, elk, or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;
(23) Shoot an arrow across any public highway;

(24) Permit any dog owned or under his or her control to chase, pursue, or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements for taking wildlife in his or her possession during the closed season on wild animals and wild birds, except a person carrying a firearm for self-defense who is not prohibited from possessing firearms under state or federal law;

(25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race, or wild hunt: Provided, That any person, group of persons, club, or organization may hold a trial upon obtaining a permit pursuant to §20-2-56 of this code. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

(26) Hunt, catch, take, kill, or attempt to hunt, catch, take, or kill any wild animal, wild bird, or wild fowl except during open seasons;

(27) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia; and
(28) Catch, take, kill, or attempt to catch, take, or kill any fish by any means within 200 feet of division personnel engaged in stocking fish in public waters.

(b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt throughout the State of West Virginia on private lands on Sundays with the written consent of the private landowner pursuant to §20-2-7 of this code, and it is lawful to hunt throughout the State of West Virginia on federal land where hunting is permitted, in state forests, on land owned or leased by the state for wildlife purposes, and on land managed by the state for wildlife purposes pursuant to a cooperative agreement.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-9. Violations of chapter generally; penalties.

Any person violating any of the provisions of this chapter or rules promulgated under the provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $20 nor more than $300, or confined in jail not less than 10 or more than 100 days, or be both fined and confined within the limitations aforesaid and, in the case of a violation by a corporation, every officer or agent thereof directing or engaging in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to the same penalties and punishment as herein provided: Provided, That any person violating §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code shall be guilty of a misdemeanor and, upon conviction of a first offense thereof, shall be fined not less than $100 nor more than $500, or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined. A person who is convicted of a second offense of violation of §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code.
is guilty of a misdemeanor and shall be fined not less than $500 nor more than $1,000 or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined. A person who is convicted of a third and subsequent offense of violation of §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code is guilty of a misdemeanor, and shall be fined not less than $1,000 nor more than $1,500, or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined: Provided, however, That any person who is in violation of §20-2-27 of this code as a result of their failure to have a valid Class E nonresident hunting and trapping license, as defined by §20-2-42d of this code, or a valid Class EE nonresident bear hunting license, as defined by §20-2-42e of this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250 nor more than $500, or confined in jail not less than 10 nor more than 100 days, or both fined and confined: Provided further, That any person who is in violation of §20-2-27 of this code as a result of their failure to have a Class F nonresident fishing license, as defined by §20-2-42f of this code, shall be guilty of a misdemeanor and, upon conviction thereof, fined not less than $100 nor more than $300 or confined in jail not less than 10 nor more than 100 days, or both fined and confined: And provided further, That any person violating any parking or speeding regulations as promulgated by the director on any state parks, state forests, public hunting and fishing areas, and all other lands and waters owned, leased, or under the control of the Division of Natural Resources shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2 nor more than $100 or confined in jail not more than 10 days, or both fined and confined.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-3-3a, relating to Cabwaylingo State Forest; creating a pilot project permitting all-terrain or off-highway recreational vehicles on designated roads and trails in Cabwaylingo State Forest; permitting the Director of the Division of Natural Resources to designate roads, trails, and campgrounds and to close certain areas, or parts thereof, to public use in consultation with the Director of the Division of Forestry; permitting the Director of the Division of Natural Resources to establish special season and permit in consultation with the Director of the Division of Forestry; making it unlawful to operate an all-terrain or off-highway vehicle on any road or trail in Cabwaylingo State Forest without such special permit, should one be created; applying the ATV, UTV, and Motorcycle Responsibility Act to the project; providing the Director of the Division of Natural Resources emergency and regular legislative rule-making authority; and requiring Legislative Auditor to review project and file report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-3a. Cabwaylingo Pilot Project.
(a) The director in consultation with the forestry director shall establish a two-year pilot project permitting all-terrain vehicles (ATVs) and off-highway recreational vehicles (ORVs) to drive on roads and trails in Cabwaylingo State Forest, as designated and approved by the director. The director may establish special seasons and designate certain campgrounds and tent sites for ATV and ORV users in the forest.

(b) The director in consultation with the forestry director may establish a special permit for purchase by the ATV and ORV users for road and trail access, and may close any areas, or parts thereof, to public use. Should the director establish such a special permit, it shall be unlawful, at any time, to operate an ATV or ORV on any roads and trails in Cabwaylingo State Forest without the special permit.

(c) The provisions of §20-15-1 et seq. of this code apply to the division, participants, outfitters, and licensees of the Cabwaylingo Pilot Project, though ORVs may be permitted.

(d) At the conclusion of the two-year pilot project, the Legislative Auditor shall review the pilot project and file a report with the Joint Committee on Government and Finance.

(e) The Director of the Division of Natural Resources shall have authority to promulgate emergency legislative rules and legislative rules necessary to effectuate the provisions of this section.
AN ACT to amend and reenact §20-2-3 of the Code of West Virginia, 1931, as amended, relating to state ownership of wildlife.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.


The ownership of and title to all wildlife in the State of West Virginia is hereby declared to be in the state, as trustee for the people. A person shall not take or hunt wildlife in any manner, or at any time, unless the person taking or hunting the wildlife consents that the title to the wildlife is and remains in the State of West Virginia for the purpose of regulating the taking, hunting, using, and disposing of the wildlife. The taking or hunting of wildlife at any time or in any manner by any person is considered consent: Provided, That, all fish, frogs, and other aquatic life in privately-owned ponds are, and remain, the private property of the owner or owners of the privately-owned ponds, and that the fish, frogs, and other aquatic life in the privately-owned ponds may be caught, taken or killed by the owner or owners at any time.
AN ACT to amend and reenact §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v of the Code of West Virginia, 1931, as amended, all relating to crossbow hunting; clarifying that the use of crossbows with Class A hunting and trapping license during big game seasons requires additional licenses, stamps or permits (with exception of buck firearms seasons); permitting crossbow hunting with Class RB and Class RRB licenses; permitting crossbow hunting with Class UU licenses; and permitting crossbow hunting with Class BG stamp.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-42a. Class A resident hunting and trapping license.

1 A Class A license is a resident hunting and trapping license and entitles the licensee to hunt and trap all legal species of wild animals and wild birds in all counties of the state, except, big game as provided in §20-2-42v of this code, and except as prohibited by rules of the director or Natural Resources Commission and when additional licenses, stamps, or permits are required. It shall be issued only to residents or aliens lawfully residing in the United States who have been domiciled residents of West Virginia for a period of 30 consecutive days or more immediately prior to the date of their application for a license. The fee for the license is $18. This is a base license and does not
require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42q. Class RB resident and Class RRB nonresident archery deer hunting stamp for an additional deer.

The director may issue a Class RB resident and a Class RRB nonresident archery deer hunting stamp when considered essential for the proper management of the wildlife resources. This stamp allows the licensee to hunt and take an additional deer during the deer archery or crossbow seasons as designated by the director. The fee for a Class RB stamp is $20 and the fee for a Class RRB stamp is $35. The director may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code governing the issuance and use of these stamps. These stamps require that the licensee purchase the appropriate base license before participating in the activities specified in this section.

§20-2-42s. Class UU nonresident archery deer hunting stamp.

A Class UU stamp is a nonresident archery deer hunting stamp and entitles the licensee to hunt and take deer with a bow during the archery deer season or with a crossbow in the crossbow deer season in all counties of the state, except as prohibited by the rules of the director or Natural Resources Commission. The fee for a Class UU stamp is $30. The stamp, issued in a form prescribed by the director, is in addition to a Class E license. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section.

§20-2-42v. Class BG resident big game stamp.

A Class BG stamp is a resident big game stamp and entitles the Class A licensee to hunt deer during the deer archery, crossbow, and muzzleloader seasons, and bear, wild turkey, and wild boar during the respective seasons, except as prohibited by rules of the director or Natural Resources Commission: Provided, That the licensee possesses all other required permits and stamps. The fee for
the stamp is $10. The stamp, issued in a form prescribed by
the director, shall be in addition to a Class A license. This
stamp requires that the licensee purchase the appropriate
base license before participating in the activities specified
in this section.

CHAPTER 172

(Com. Sub. for H. B. 4180 - By Delegates Hamilton,
A. Evans, R. Romine, Love, Eldridge, Jennings,
Lynch, Hollen and Wagner)

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §20-1-7 of the Code of West
Virginia, 1931, as amended, relating to wildlife resources; and
authorizing the Director of the Division of Natural Resources
to establish procedures and a fee schedule for individuals
applying for limited permit hunts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties and
responsibilities granted and assigned to the director in this
chapter and elsewhere by law, the director may:

(1) With the advice of the commission, prepare and
administer, through the various divisions created by this
chapter, a long-range comprehensive program for the
conservation of the natural resources of the state which best
effectuates the purpose of this chapter and which makes
adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the Division of Natural Resources any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That intergovernmental cooperative agreements and agreements with nongovernmental organizations in furtherance of providing a comprehensive program for the exploration, conservation, development, protection, enjoyment and use of the natural resources of the state are exempt from the provisions of §5A-3-1 et seq. of this code: Provided, however, That repair and related construction contracts necessary to protect public health or safety or to provide uninterrupted enjoyment and public use of state parks, state forests, wildlife management areas and state natural areas under the jurisdiction of the Division of Natural Resources are exempt from the provisions of §5A-3-1 et seq. of this code. Nothing in this section authorizes the construction or replacement of capital improvements without complying with the provisions of §5A-3-1 et seq. of this code.

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the Natural Resources Commission may appear to be necessary
and proper for the purpose of giving interested persons in
the various sections of the state an opportunity to be heard
concerning open season for their respective areas, and report
the results of the meetings to the Natural Resources
Commission before the season and bag limits are fixed by
it;

(7) Suspend open hunting season upon any or all
wildlife in any or all counties of the state with the prior
approval of the Governor in case of an emergency such as a
drought, forest fire hazard or epizootic disease among
wildlife. The suspension shall continue during the existence
of the emergency and until rescinded by the director.
Suspension, or reopening after such suspension, of open
seasons may be made upon twenty-four hours’ notice by
delivery of a copy of the order of suspension or reopening
to the wire press agencies at the state capitol;

(8) Supervise the fiscal affairs and responsibilities of the
division;

(9) Designate such localities as he or she shall determine
to be necessary and desirable for the perpetuation of any
species of wildlife;

(10) Enter private lands to make surveys or inspections
for conservation purposes, to investigate for violations of
provisions of this chapter, to serve and execute warrants and
processes, to make arrests and to otherwise effectively
enforce the provisions of this chapter;

(11) Acquire for the state in the name of the Division of
Natural Resources by purchase, condemnation, lease or
agreement, or accept or reject for the state, in the name of
the Division of Natural Resources, gifts, donations,
contributions, bequests or devises of money, security or
property, both real and personal, and any interest in such
property, including lands and waters, which he or she deems
suitable for the following purposes:
(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and the rules issued hereunder;

d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his or her supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha State Forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. The director must obtain the written permission of the Governor to sell timber when the appraised value is more than $5,000. The director shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be each county in which the
timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director may reject any and all bids and readvertise for bids. If the foregoing provisions of this section have been complied with and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he or she deems appropriate, but the sale price may not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section may extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber may not be validated by this section if a contract is otherwise invalid. The proceeds arising from the sale of the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter: Provided, That nothing contained herein may prohibit the sale of timber which otherwise would be removed from right-of-way’s necessary for and strictly incidental to the extraction of minerals;

(14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel and any other minerals that may be found in the lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The director, before making sale or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for such publication shall be each county in which such lands are located. The minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the proper performance of the sales contract or lease as the director shall designate; but the director may reject any and all bids and readvertise for bids. The proceeds arising from any such sale or lease shall be paid to the Treasurer of the State of
West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for the protection of forests and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(16) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(17) Report to the Governor each year all information relative to the operation and functions of the division and the director shall make such other reports and recommendations as may be required by the Governor, including an annual financial report covering all receipts and disbursements of the division for each fiscal year, and he or she shall deliver the report to the Governor on or before December 1, next after the end of the fiscal year so covered. A copy of the report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office, except as otherwise provided by law;

(19) Offer and pay, in his or her discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he or she may determine to be necessary from any person issued a license or permit under the provisions of this chapter, but no person may be required to disclose secret processes or confidential data of competitive significance;
(21) Purchase as provided by law all equipment necessary for the conduct of the division;

(22) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of the research;

(23) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the division for all purposes specified in this chapter and he or she shall account for and report on all such receipts and expenditures to the Governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value and to take such steps as may be necessary in establishing the monuments or parks as he or she deems advisable;

(26) Maintain in his or her office at all times, properly indexed by subject matter and also in chronological sequence, all rules made or issued under the authority of this chapter. The records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his or her office, except the power to execute contracts not related to land and stream management, to appointees and employees of the division, who shall act under the direction and supervision of the director and for whose acts he or she shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;
(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the division in moving his or her household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee may be paid more frequently than once in twelve months;

(30) Establishing procedures and fee schedule for individuals applying for limited permit hunts; and

(31) Promulgate rules, in accordance with the provisions of §29A-1-1 et seq. of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

CHAPTER 173


[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]
Natural Resources to develop a certification process and prescribed burn course; setting forth requirements for certification as a certified prescribed fire manager; prescribing manner in which prescribed burn must be performed; setting forth violations which may result in revocation of certification; and authorizing rule-making.

Be it enacted by the Legislature of West Virginia:

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 5 p.m. and 7 a.m., at which time the fire must be extinguished.

(b) Permissible fires during forest fire seasons. — The following attended fires are permitted during forest fire season as set forth in subsection (a) of this section 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 10 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 as set forth in subsection (a) of this section 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 30 days of receipt if the application is uncontested, or within 90 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 becomes effective after 24 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) A person shall remove all flammable material from the area immediately surrounding the material to be burned for a distance which ensures the fire will at all times be contained; this safety strip shall in no event be less than 10 feet wide. Any person or his or her agent or employee who sets or causes to be set any fire which escapes the safety strip and causes damage to the lands of another is guilty of a misdemeanor.

(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 60 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.

§20-3-5a. Prescribed Fire Program.

(a) As used in this section:

(1) “Certified prescribed fire manager” means an employee of the Division of Forestry, the Division of Natural Resources, or any federal employee who has successfully completed a certification process established by the director.

(2) “Prescribed fire” means the controlled application of fire or wildland fuels in wildlife management areas, state forests or federal lands in either the natural or modified state, under specified environmental conditions, which allows the fire to be confined to a predetermined area and
produces the fire behavior and fire characteristics necessary
to attain planned fire treatment and ecological, silvicultural,
and wildlife management objectives.

(3) “Prescription” means a written statement defining
the objectives to be attained by a prescribed fire and the
conditions of temperature, humidity, wind direction and
speed, fuel moisture, and soil moisture under which a fire
will be allowed to burn. A prescription is generally
expressed as an acceptable range of the prescription
elements.

(b) Director certification process. — The director shall
develop and administer a certification process and
prescribed burn course for any individual who desires to
become a certified prescribed fire manager. The prescribed
fire course shall include the following subjects: the legal
aspects of prescribed fire, fire behavior, prescribed fire
tactics, smoke management, environmental effects, plan
preparation, and safety. The director shall give a final
examination on these subjects to all attendees. The director
may charge a reasonable fee to cover the costs of the
prescribed fire course and the examination.

(c) To be certified as a certified prescribed fire manager,
a person shall:

(1) Successfully complete all components of the
prescribed fire course developed by the director and pass the
examination developed for the course;

(2) Successfully complete a prescribed fire course
comparable to that developed by the director and pass the
examination developed for the course; or

(3) Demonstrate relevant past experience, complete a
review course and pass the examination developed for the
prescribed fire course.

(d) Prescribed burning shall be performed in the
following manner:
(1) A certified prescribed fire manager shall prepare a prescription for the prescribed fire prior to the burn. The prescription shall include: (A) The landowner’s name, address, and telephone number, and the telephone number of the certified prescribed fire manager who prepared the plan; (B) a description of the area to be burned, a map of the area to be burned, the objectives of the prescribed fire, and the desired weather conditions or parameters; (C) a summary of the methods to be used to start, control, and extinguish the prescribed fire; and (D) a smoke management plan. The smoke management plan shall conform to the Department of Environmental Protection’s rule, Control of Air Pollution from Combustion of Refuse, 45 CSR 6. A copy of the prescription shall be retained at the site throughout the period of the burning;

(2) A certified prescribed fire manager shall directly supervise a prescribed fire and ensure that the prescribed fire is in accordance with the prescription; and

(3) The certified prescribed fire manager shall notify the nearest regional office of the division 24 hours prior to the prescribed fire.

(e) If the actions of any certified prescribed fire manager or the prescriptions prepared by him or her violate any provision of this article, state air pollution control laws, the Division of Forestry rules, the Department of Environmental Protection rules or laws, or threaten public health and safety, the director may revoke his or her certification.

(f) The director shall propose rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code for establishing the procedures for the development of a certification program for prescribed fire managers.
AN ACT to amend and reenact §20-14-1, §20-14-2, §20-14-3, §20-14-4, and §20-14-8 of the Code of West Virginia, 1931, as amended, all relating to the Hatfield-McCoy Recreation Authority; updating legislative findings; adding the counties of Braxton, Clay, Fayette, Nicholas, and Webster to the list of participating counties; modifying the number of board members; providing that 10 members of the board constitutes a quorum; prohibiting persons from consuming non-intoxicating beer, nonintoxicating craft beer, or wine at any time within the Hatfield-McCoy Recreation Area; prohibiting a child under the age of six from being allowed on any trail within the Hatfield-McCoy Recreation Area; prohibits children under the age of eight years who are required to be in a child passenger safety device while occupying a motor vehicle from being allowed on any trail within the Hatfield-McCoy Recreation Area; and requiring all persons operating or riding upon an ATV, UTV, or motorcycle to follow the manufacturer’s recommendations for that vehicle relating to age and size limitations for operators and passengers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.
The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway motor vehicle enthusiasts. The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented recreation facilities could exist on private property without diminishing the landowner’s interest, control, or profitability in the land and without increasing the landowner’s exposure to liability.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities.

The Legislature further finds that the economic benefits of trail development are only realized when the ridership is concentrated in specific areas. Before private capital will be brought to the marketplace in support of a recreational trail system, a density of trail ridership must be demonstrated and sustained over a period of years to warrant the investment. Therefore, any expansion of the state’s recreational trail systems must be strategic and require a showing that the new trail system would not only expand visitation, but would not materially detract from the visitation and ridership on existing trail systems where numerous private and public investments have already been made.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups,
and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make available for public use through the Hatfield-McCoy Regional Recreation Authority land for these recreational purposes by limiting their liability for injury to persons entering thereon, by limiting their liability for injury to the property of persons entering thereon, and by limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§20-14-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(a) “Authority” means the Hatfield-McCoy Regional Recreational Authority;

(b) “Board” means the board of the Hatfield-McCoy Regional Recreation Authority;

c) “Charge” means, for purposes of limiting liability for recreational purposes set forth in this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by the authority: Provided, That the authority may set charges in differing amounts for different categories of participants, including, but not limited to, in-state and out-of-state participants, as the authority sees fit;

d) “Hatfield-McCoy Recreation Area” means a system of recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities that are a part of the system;
(e) “Land” includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment thereon when attached to the realty;

(f) “Owner” means those vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a dominant estate, or other lawful occupant;

(g) “Participant” means any person using the land, trails, and facilities of the Hatfield-McCoy Recreation Area;

(h) “Participating county or counties” means the counties of Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne, Webster, and Wyoming that have agreed to operate the Hatfield-McCoy Regional Recreation Authority as a joint development entity and to participate in its governance; and

(i) “Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or motor vehicle driving and riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites, or otherwise using land for purposes of the user.

§20-14-3. Creation; appointment of board; terms.

(a) The public corporation, the Hatfield-McCoy Regional Recreation Authority, previously created by this section is hereby converted to a new public corporation created as a joint development entity of the participating counties for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by off-highway motor vehicle
enthusiasts. This recreational trail system shall be located in the counties of Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Wayne, Webster, and Wyoming with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) The authority shall be governed by a board of no more than two times the number of participating counties who shall be representative of the various interests involved in the Hatfield-McCoy Recreation Area project in the participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in section two of this article, shall appoint one member of the board who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas, or other resource-extraction industry or who is a licensed land surveyor or licensed professional engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(2) The county commission of each participating county, as defined in §20-14-2 of this code, shall appoint one member of the board who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the Hatfield-McCoy Recreation Area project or their designee. This member shall be appointed to a four-year term.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is
eligible for reappointment. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) The conversion of the Hatfield-McCoy Regional Recreation Authority to a joint development entity does not terminate or interrupt its status as a public corporation. The amendments to this article made during the 2015 regular session of the Legislature do not alter the debts, liabilities, responsibilities, or other obligations of any party with regard to this public corporation.

(d) The Hatfield-McCoy Regional Recreation Authority is a “public body” for purposes of the West Virginia Freedom of Information Act, as provided in article one, chapter twenty-nine-b of this code.

§20-14-4. Board; quorum; executive director; expenses.

The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

The board shall meet quarterly, unless a special meeting is called by its chairman: Provided, That at the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall elect a chairman, secretary, and Treasurer from among its own members.

Ten members of the board constitute a quorum and a quorum shall be present for the board to conduct business.

The board may prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants, and shall review and approve an annual budget. The fiscal year for the authority
begins on July 1 and ends on the thirtieth day of the following June.

The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial, and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits, and total compensation. Before August 15 the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

All costs incidental to the administration of the authority, including office expenses, personal services expense, and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

1. A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land and not for recreational purposes;

2. A person may not consume or possess any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, or wine at any time or any location within the Hatfield-McCoy Recreation Area.

3. The operator and all passengers of a motor vehicle within the Hatfield-McCoy Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard no. 218 or Snell Memorial Foundation safety standards for protective headgear for vehicle users.

4. Each trail user shall obey all traffic laws, traffic-control devices, and signs within the Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor vehicles, motorcycles, or those equipped with roll cages.

5. Each trail user shall at all times remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area.

6. A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time from one-half hour after sunset until one-half hour before sunrise, except in an emergency.
(g) Every person within the Hatfield-McCoy Recreation Area who is under 16 years of age shall at all times be under the immediate supervision of, and within sight of, a person who is at least 18 years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent, guardian, or supervising adult may allow a child under the age of 16 years to leave that person’s sight and supervision within the Hatfield-McCoy Recreation Area.

(h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area except at a clearly marked location at a trailhead center.

(i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle in any competition or exhibition of speed, acceleration, racing, test of physical endurance, or climbing ability unless in an event sanctioned by the authority.

(j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area is subject to all of the duties applicable to the driver of a motor vehicle by the provisions of §17C-1-1 et seq. of this code except where inconsistent with the provisions of this article and except as to those provisions of §17C-1-1 et seq. of this code which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

(k) A person may not possess a glass container while riding on a motor vehicle within the Hatfield-McCoy Recreation Area.

(l) A person may not operate or ride in a utility terrain vehicle, as defined in §17F-1-1 et seq. of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting at a minimum federal motor vehicle safety standard and properly worn by the driver and all passengers.
(m) (1) No child under the age of six years may be allowed on any trail within the Hatfield-McCoy Recreation Area; and

(2) No child under the age of eight years who is required to be placed in a child passenger safety device system meeting applicable federal motor vehicle safety standards pursuant to §17C-15-46 of this code while occupying a motor vehicle may be allowed on any trail within the Hatfield-McCoy Recreation Area; and

(3) All persons operating or riding upon an ATV, UTV, or motorcycle as defined in §20-15-1 et seq. of this code shall follow the manufacturer’s recommendations for that vehicle relating to age and size limitations for operators and passengers.

(n) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100. Prosecution or conviction for the misdemeanor described in this subsection may not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

CHAPTER 175

(Com. Sub. for H. B. 4607 - By Delegates Hamrick, Higginbotham, Howell and Graves)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §20-5-2 of the Code of West Virginia, 1931, as amended, relating to the Division of Natural Resources permitting the use of recreational unmanned aircraft systems in state parks, state forests, and on rail trails;
requiring persons who intend to operate unmanned aircraft systems to register with the superintendent prior to participating in the use of any unmanned aircraft system; establishing certain criteria for the restricted operation of unmanned aircraft systems within state parks, forests, and rail trails; and clarifying that persons who operate unmanned aircraft systems assume full responsibility and liability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PARKS AND RECREATION.

§20-5-2. Powers of the director with respect to the section of parks and recreation.

(a) The Director of the Division of Natural Resources is responsible for the execution and administration of the provisions in this article as an integral part of the parks and recreation program of the state and shall organize and staff the section of parks and recreation for the orderly, efficient and economical accomplishment of these ends. The authority granted in the year 1994 to the Director of the Division of Natural Resources to employ up to six additional unclassified personnel to carry out the parks’ functions of the Division of Natural Resources is continued.

(b) The Director of the Division of Natural Resources shall:

(1) Establish, manage and maintain the state’s parks and recreation system for the benefit of the people of this state and do all things necessary and incidental to the development and administration of the state’s parks and recreation system;

(2) Acquire property for the state in the name of the Division of Natural Resources by purchase, lease or agreement; retain, employ and contract with legal advisors and consultants; or accept or reject for the state, in the name of the division, gifts, donations, contributions, bequests or devises of money, security or property, both real and
personal, and any interest in the property, including lands and waters, for state park or recreational areas for the purpose of providing public recreation: Provided, That the provisions of section §20-1-20 et seq. of this code are specifically made applicable to any acquisitions of land: Provided, however, That any sale, exchange or transfer of property for the purposes of completing land acquisitions or providing improved recreational opportunities to the citizens of the state is subject to the procedures of §5a-10-1 et seq. of this code: Provided further, That no sale of any park or recreational area property, including lands and waters, used for purposes of providing public recreation on the effective date of this article and no privatization of any park may occur without statutory authority;

(3) Approve and direct the use of all revenue derived from the operation of the state parks and public recreation system for the operation, maintenance and improvement of the system, individual projects of the system or for the retirement of park development revenue bonds: Provided, That all revenues derived from the operation of the state parks and public recreation system shall be invested by the Treasurer and all proceeds from investment earnings shall accrue for the exclusive use for the operation, maintenance, and improvement of the system, individual projects of the system or for the retirement of park development revenue bonds;

(4) Effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources by approving the use of no less than 20 percent of the:

(A) Funds appropriated for purposes of advertising and marketing expenses related to the promotion and development of tourism, pursuant to §29-22-18 (j) of this code; and

(B) Funds authorized for expenditure from the Tourism Promotion Fund for purposes of direct advertising, pursuant to §5B-2-12 and §29-22A-10 of this code;
(5) Issue park development revenue bonds as provided in this article;

(6) Provide for the construction and operation of cabins, lodges, resorts, restaurants and other developed recreational service facilities, subject to the provisions of §20-5-15 and §20-1-20 of this code;

(7) The director may sell timber that has been severed in a state park incidental to the construction of park facilities or related infrastructure where the construction is authorized by the Legislature in accordance with §20-1-20 of this code, and the sale of the timber is otherwise in the best interest of park development, without regard to proceeds derived from the sale of timber. The gross proceeds derived from the sale of timber shall be deposited into the operating budget of the park from which the timber was harvested;

(8) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to control the uses of parks: Provided, That the director may not permit public hunting, except as otherwise provided in this section, the exploitation of minerals or the harvesting of timber for commercial purposes in any state park;

(9) Exempt designated state parks from the requirement that all payments must be deposited in a bank within 24 hours for amounts less than $500 notwithstanding any other provision of this code to the contrary: Provided, That such designated parks shall make a deposit in any amount no less than every seven working days;

(10) Waive the use fee normally charged to an individual or group for one day’s use of a picnic shelter or one week’s use of a cabin in a state recreation area when the individual or group donates the materials and labor for the construction of the picnic shelter or cabin: Provided, That the individual or group was authorized by the director to construct the picnic shelter or cabin and that it was constructed in accordance with the authorization granted
and the standards and requirements of the division pertaining to the construction. The individual or group to whom the waiver is granted may use the picnic shelter for one reserved day or the cabin for one reserved week during each calendar year until the amount of the donation equals the amount of the loss of revenue from the waiver or until the individual dies or the group ceases to exist, whichever first occurs. The waiver is not transferable. The director shall permit free use of picnic shelters or cabins to individuals or groups who have contributed materials and labor for construction of picnic shelters or cabins prior to the effective date of this section. The director shall propose a legislative rule for legislative approval in accordance with §29A-3-1 et seq. of this code governing the free use of picnic shelters or cabins provided in this section, the eligibility for free use, the determination of the value of the donations of labor and materials, the appropriate definitions of a group and the maximum time limit for the use;

(11) Provide within the parks a market for West Virginia arts, crafts and products, which shall permit gift shops within the parks to offer for sale items purchased on the open market from local artists, artisans, craftsmen and suppliers and local or regional crafts cooperatives;

(12) Provide that reservations for reservable campsites may be made, upon two days’ advance notice, for any date for which space is available within a state park or recreational area managed by the parks and recreation section;

(13) Provide that reservations for all state parks and recreational areas managed by the parks and recreation section of the division may be made by use of a valid credit card;

(14) Develop a plan to establish a centralized computer reservation system for all state parks and recreational areas managed by the parks and recreation section and to implement the plan as funds become available; and
(15) Notwithstanding the provisions of §20-2-58 of this code, the Natural Resources Commission is authorized to promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code to permit and regulate the hunting of white-tail deer in any state park as considered appropriate by the director to protect the ecological integrity of the area.

(16) Permit the use of drones within State Parks, Forests and Rail Trails. Persons who intend to operate an unmanned aircraft system shall register at the area superintendent’s office prior to engaging or participating in the operation of any unmanned aircraft system and specify where the activity will take place. A superintendent may only prohibit, issue directives, or implement time and place restrictions on unmanned aircraft system use in areas or portions thereof in order to: (i) protect the safety and privacy of other park users, (ii) protect area facilities, (iii) protect the peaceful and quiet atmosphere of the area, or (iv) prevent harassment of wildlife. Upon registration the superintendent shall provide a list and map to the unmanned aircraft system operator of any prohibited areas within the park. Participants in drone operation activities assume full responsibility and liability for any risk or injury related to using an unmanned aircraft system.

CHAPTER 176

(Com. Sub. for H. B. 4320 - By Delegates McGeehan and Folk)

AN ACT to amend and reenact §39B-1-114 of the Code of West Virginia, 1931, as amended; and to amend and reenact §39B-2-101 of said code, all relating to limiting the ability of an agent under a power of attorney to take self-benefiting actions;
clarifying the presumption that an act is not within the scope of authority granted in a power of attorney when an agent benefits from the act to the detriment of an ancestor, spouse, heir, or descendant; requiring express grant of authority to exercise authority over the content of electronic communications sent or received by the principal; and clarifying the prohibition against an agent exercising authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§39B-1-114. Agent’s duties.

(a) Notwithstanding provisions in the power of attorney, an agent who has accepted appointment shall:

(1) Act in accordance with the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, in the principal’s best interest;

(2) Act in good faith; and

(3) Act only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent who has accepted appointment shall:

(1) Act loyally for the principal’s benefit;

(2) Act so as not to create a conflict of interest that impairs the agent’s ability to act impartially in the principal’s best interest;

(3) Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;

(4) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;
(5) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal’s best interest; and

(6) Attempt to preserve the principal’s estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal’s best interest based on all relevant factors, including:

(A) The value and nature of the principal’s property;

(B) The principal’s foreseeable obligations and need for maintenance;

(C) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; and

(D) Eligibility for a benefit, a program or assistance under a statute or regulation.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal’s estate plan for failure to preserve the plan.

(d) An agent that acts with care, competence and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent’s representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal’s property declines.
(g) An agent who exercises authority to delegate to another person the authority granted by the principal or who engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal or provide an accounting unless: ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal’s estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days. If an agent fails or refuses to comply with the provisions of this section, the court may award the principal or other authorized party requesting the disclosure reimbursement of reasonable attorneys fees and costs incurred.

ARTICLE 2. AUTHORITY.

§39B-2-101. Authority that requires specific grant; grant of general authority.

(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal’s property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject to:

*NOTE: This section was also amended by S. B. 102 (Chapter 92), which passed prior to this act.*
(1) Create, amend, revoke or terminate an inter vivos trust;

(2) Make a gift;

(3) Create or change rights of survivorship;

(4) Create or change a beneficiary designation;

(5) Delegate authority granted under the power of attorney;

(6) Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) Exercise fiduciary powers that the principal has authority to delegate; or

(8) Disclaim property, including a power of appointment.

(9) Exercise authority over the content of electronic communications, as defined in 18 U.S.C. Section 2510(12) sent or received by the principal.

(b) Notwithstanding a grant of authority to do an act described in this section, unless the power of attorney otherwise provides, an agent may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

(c) Subject to subsections (a), (b), (d) and (e) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in §39B-2-104 through §39B-2-116 of this code.
(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to the provisions of §39B-2-117 of this code.

(e) Subject to subsections (a), (b) and (d) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal’s successors in interest as if the principal had performed the act.

CHAPTER 177

(Com. Sub. for S. B. 456 - By Senators Gaunch, Takubo, Ferns, Boso and Maroney)

[Passed March 7, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-41-1, §30-41-2, and §30-41-3, all relating to creating the Physical Therapy Licensure Compact Act; authorizing the Board of Physical Therapy to execute the compact; setting forth purposes; setting forth the purposes for the compact; defining terms; providing participation requirements; providing licensure
requirements; establishing a licensure process; establishing application process; providing for fees; providing requirements for renewal of a license; providing for joint investigation; establishing the effect of disciplinary actions; creating the commission to administer the compact; setting forth commission composition; establishing the authority of the commission; providing immunity; establishing commission rule-making authority; establishing licensure information system; providing for compact administrators; providing for judicial review; providing for state enforcement; providing the commission may intervene in proceedings; providing for legal enforcement of compact rules and provisions; providing for termination or withdrawal of a member state; providing for compact oversight; providing dispute resolution; setting forth provisions for resolution of disputes; establishing provisions for state eligibility; setting forth the circumstances under which the compact will become effective; providing for amending the compact; setting forth procedures for states to withdraw from the compact; providing process to amend the compact; establishing provisions related to severability; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. PHYSICAL THERAPY LICENSURE COMPACT ACT.

§30-41-1. Short title.

This act shall be known and may be cited as the Physical Therapy Licensure Compact Act.

§30-41-2. Authority to execute compact.

The West Virginia Board of Physical Therapy, on behalf of the State of West Virginia, is hereby authorized to execute a compact in substantially the following form with any one or more of the states of the United States, and the Legislature hereby signifies in advance its approval and ratification of such compact:
SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

2. Enhance the states’ ability to protect the public’s health and safety;

3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;

4. Support spouses of relocating military members;

5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state’s practice standards.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. ‘Active duty military’ means full-time duty status in the active uniformed service of the United States, including
members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211.

2. ‘Adverse action’ means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. ‘Alternative program’ means a non-disciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. ‘Compact privilege’ means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. ‘Continuing competence’ means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

6. ‘Data system’ means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

7. ‘Encumbered license’ means a license that a physical therapy licensing board has limited in any way.

8. ‘Executive Board’ means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

9. ‘Home state’ means the member state that is the licensee’s primary state of residence.
10. ‘Investigative information’ means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. ‘Jurisprudence requirement’ means the assessment of an individual’s knowledge of the laws and rules governing the practice of physical therapy in a state.

12. ‘Licensee’ means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. ‘Member state’ means a state that has enacted the Compact.

14. ‘Party state’ means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. ‘Physical therapist’ means an individual who is licensed by a state to practice physical therapy.

16. ‘Physical therapist assistant’ means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

17. ‘Physical therapy,’ ‘physical therapy practice,’ and ‘the practice of physical therapy’ mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

18. ‘Physical Therapy Compact Commission’ or ‘Commission’ means the national administrative body whose membership consists of all states that have enacted the Compact.

19. ‘Physical therapy licensing board’ or ‘licensing board’ means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.
20. ‘Remote state’ means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. ‘Rule’ means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. ‘State’ means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a state must:

1. Participate fully in the Commission’s data system, including using the Commission’s unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3B;

5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.
B. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and to submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. § 534 and 42 U.S.C. § 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

D. Member states may charge a fee for granting a compact privilege.

SECTION 4. COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:

1. Hold a license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with Section 4D, G and H;

4. Have not had any adverse action against any license or compact privilege within the previous 2 years;

5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and
8. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of Section 4A to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state’s regulatory authority. A remote state may, in accordance with due process and that state’s laws, remove a licensee’s compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home-state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4A to obtain a compact privilege in any remote state.

G. If a licensee’s compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:
1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two years have elapsed from the date of the adverse action.

H. Once the requirements of Section 4G have been met, the license must meet the requirements in Section 4A to obtain a compact privilege in a remote state.

SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

A. Home of record;

B. Permanent Change of Station (PCS); or

C. State of current residence if it is different than the PCS state or home of record.

SECTION 6. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

B. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

C. Nothing in this Compact shall override a member state’s decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state’s laws. Member states must require licensees who enter any alternative programs in lieu of discipline to
agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:

1. Take adverse actions as set forth in Section 4D against a licensee’s compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint Investigations:

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.
253 2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

257 SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION.

259 A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

262 1. The Commission is an instrumentality of the Compact states.

264 2. Nothing in this Compact shall be construed to be a waiver of sovereign immunity or the state constitutional provisions for proper venue by the State of West Virginia.

267 B. Membership, Voting, and Meetings:

268 1. Each member state shall have and be limited to one delegate selected by that member state’s licensing board.

270 2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

274 3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

277 4. The member state board shall fill any vacancy occurring in the Commission.

279 5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.
6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates’ participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states: Provided, That the West Virginia licensing authority shall first promulgate rules pursuant to West Virginia Code;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the
Compact and to establish the Commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees comprising of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board
The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact:

1. The Executive Board shall be comprised of nine members:
   a. Seven voting members who are elected by the Commission from the current membership of the Commission;
   b. One ex-officio, nonvoting member from a recognized national physical therapy professional association; and
   c. One ex-officio, nonvoting member from a recognized membership organization of the physical therapy licensing boards.

2. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:
   a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;
   b. Ensure Compact administration services are appropriately provided, contractual or otherwise;
   c. Prepare and recommend the budget;
   d. Maintain financial records on behalf of the Commission;
e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

E. Meetings of the Commission:

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 9.

2. The Commission or the Executive Board or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Board or other committees of the Commission must discuss:

   a. Non-compliance of a member state with its obligations under the Compact;

   b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees, or other matters related to the Commission’s internal personnel practices and procedures;

   c. Current, threatened, or reasonably anticipated litigation;

   d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

   e. Accusing any person of a crime or formally censuring any person;

   f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

   g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission:

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total
amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification:

1. The members, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person’s intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 8. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:
1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or compact privilege;

4. Non-confidential information related to alternative program participation;

5. Any denial of application for licensure, and the reason(s) for such denial; and

6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 9. RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or
amendment subject to the limitations set forth in C(5) of Section 7 of this Compact.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute, resolution, or refusal to adopt the rules as promulgated by the state licensing authority, in the same manner used to adopt the Compact, within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.
F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least 25 persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least 25 members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing:

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing no fewer than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was
not held, the Commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule;

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of 30 days
after posting. The revision may be challenged only on
grounds that the revision results in a material change to a
rule. A challenge shall be made in writing and delivered to
the chair of the Commission prior to the end of the notice
period. If no challenge is made, the revision will take effect
without further action. If the revision is challenged, the
revision may not take effect without the approval of the
Commission.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION,
AND ENFORCEMENT

A. Oversight:

1. The executive, legislative, and judicial branches of
state government in each member state shall enforce this
Compact and take all actions necessary and appropriate to
effectuate the Compact’s purposes and intent. The
provisions of this Compact and the rules promulgated
hereunder shall have standing as statutory law subject to the
limitations set forth herein.

2. All courts shall take judicial notice of the Compact
and the rules, if approved by the Legislature, in any judicial
or administrative proceeding in a member state pertaining
to the subject matter of this Compact which may affect the
powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service
of process in any such proceeding, and shall have standing
to intervene in such a proceeding for all purposes. Failure to
provide service of process to the Commission shall render a
judgment or order void as to the Commission, this Compact,
or promulgated rules.

B. Default, Technical Assistance, and Termination:

1. If the Commission determines that a member state has
defaulted in the performance of its obligations or
responsibilities under this Compact or the promulgated
rules, the Commission shall:
a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from, the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state’s legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorneys’ fees.
C. Dispute Resolution:

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement:

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action against a member state, in the state in which the state member is located, where a member state is found to be in default, in order to enforce compliance with the provisions of the Compact, its promulgated rules, and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE; ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of
rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission’s initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same:

1. A member state’s withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state’s physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be
contrary to the constitution of any party state or of the
United States or the applicability thereof to any government,
agency, person, or circumstance is held invalid, the validity
of the remainder of this Compact and the applicability
thereof to any government, agency, person, or circumstance
shall not be affected thereby. If this Compact shall be held
contrary to the constitution of any party state, the Compact
shall remain in full force and effect as to the remaining party
states and in full force and effect as to the party state
affected as to all severable matters.”

§30-41-3. Effective date.

1. This article shall be effective immediately upon
2. passage.

CHAPTER 178

(Com. Sub. for S. B. 499 - By Senators Maroney,
Clements, Prezioso, Stollings, Takubo, Plymale, Cline
and Jeffries)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §30-3-10 of the Code of West
Virginia, 1931, as amended, relating to the licensing by the
Board of Medicine; clarifying certain requirements to obtain
licensure; reorganizing the minimum licensing requirements
for a license; and providing the completion of a certain
amount of graduate clinical training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.
§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) A person seeking licensure as an allopathic physician shall apply to the board.

(b) A license may be granted to an applicant who has graduated and received the degree of doctor of medicine or its equivalent from a school of medicine located within the United States, the Commonwealth of Puerto Rico, or Canada and which is approved by the Liaison Committee on Medical Education or by the board and who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board’s satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(C) Has, within 10 consecutive years, passed all component parts of the United States Medical Licensing Examination or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant’s fitness to practice medicine and surgery;

(D) Has successfully completed a minimum of one year of graduate clinical training in a program which is approved by the Accreditation Council for Graduate Medical Education; and

(E) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 et seq. of this code.
(c) A license may be granted to an applicant who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico, and Canada who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board’s satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(C) Has, within 10 consecutive years, passed all component parts of the United States Medical Licensing Examination or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant’s fitness to practice medicine and surgery;

(D) Has successfully completed:

(i) A minimum of two years of graduate clinical training which is approved by the Accreditation Council for Graduate Medical Education; or

(ii) A minimum of one year of graduate clinical training which is approved by the Accreditation Council for Graduate Medical Education and the applicant holds a current certification by a member board of the American Board of Medical Specialties;

(E) Holds a valid ECFMG certificate issued by the Educational Commission for Foreign Medical Graduates; or
(i) Holds a full, unrestricted, and unconditional license to practice medicine and surgery under the laws of another state, the District of Columbia, Canada, or the Commonwealth of Puerto Rico;

(ii) Has been engaged in the practice of medicine on a full-time professional basis within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and

(iii) Is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline reportable to the National Practitioner Data Bank by a medical licensing board in any jurisdiction;

(F) Can communicate in the English language; and

(G) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 et seq. of this code.

(d) A person seeking licensure as a podiatrist shall apply to the board. A license may be granted to an applicant who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board’s satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of podiatric medicine and surgery;

(C) Has graduated and received the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine which is approved by the Council of Podiatric Medical Education or by the board;
(D) Has, within 10 consecutive years, passed all component parts of the American Podiatric Medical Licensing Examination, or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant’s fitness to practice podiatric medicine;

(E) Has successfully completed a minimum of one year of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the United States armed forces or three years’ private podiatric clinical experience in lieu of this requirement; and

(F) Meets any other reasonable criteria for licensure set forth in this article or in legislative rules promulgated by the board.

(e) Notwithstanding any of the provisions of this article, the board may issue a restricted license to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant’s exceptional education, training, and practice credentials, the applicant’s practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant’s education, training, and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) Upon a finding by the board that the applicant received his or her post-graduate medical training outside of the United States and its territories;

(4) That the restricted license issued under extraordinary circumstances is approved by a vote of three fourths of the members of the board; and
(5) That orders denying applications for a restricted license under this subsection are not appealable.

(f) The board may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code that establish and regulate the restricted license issued to an applicant in extraordinary circumstances pursuant to the provisions of this section.

(g) Personal interviews by board members of all applicants are not required. An applicant for a license may be required by the board, in its discretion, to appear for a personal interview and may be required to produce original documents for review by the board.

(h) All licenses to practice medicine and surgery granted prior to July 1, 2008, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: Provided, That the provisions of §30-3-10(d) of this code do not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June 11, 1965: Provided, however, That all persons licensed to practice chiropody prior to June 11, 1965, are permitted to use the term “chiropody-podiatry” and shall have the rights, privileges, and responsibilities of a podiatrist set out in this article.

(i) The board may not issue a license to a person not previously licensed in West Virginia whose license has been revoked or suspended in another state until reinstatement of his or her license in that state.

(j) The board need not reject a candidate for a nonmaterial technical or administrative error or omission in the application process that is unrelated to the candidate’s professional qualifications as long as there is sufficient information available to the board to determine the eligibility and qualifications of the candidate for licensure.
CHAPTER 179

(Com. Sub. for S. B. 521 - By Senators Trump, Gaunch, Maynard, Stollings and Boso)

[Passed March 10, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-29-13, relating to requiring any newly appointed chief executive of a municipal law-enforcement agency to be either a certified law-enforcement officer, or to be certifiable as such, according to the requirements set forth in other applicable provisions of this code; and providing that chief executives employed prior to the effective date are exempt from this requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-13. Chief executive requirements.

Notwithstanding any provision of this code to the contrary, on or after July 1, 2018, any person appointed to serve as the chief executive of a municipal law-enforcement agency shall be a certified, or certifiable as, a law-enforcement officer as provided in §30-29-5 of this code: Provided, That chief executives of municipal law-enforcement agencies employed prior to July 1, 2018, who are not certified law-enforcement officers are exempt from this requirement for purposes of the position he or she holds as of that date.
AN ACT to amend and reenact §30-10-12 of the Code of West Virginia, 1931, as amended, relating to qualifications for certification as an animal euthanasia technician; authorizing issuance of animal euthanasia technician certificate to certain persons certified by another state or jurisdiction; setting requirements for issuance of certificate; and authorizing application and fees to be prescribed by the Board of Veterinary Medicine in legislative rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. VETERINARIANS.

§30-10-12. Requirements to be a certified animal euthanasia technician.

1 (a) To be eligible to be a certified animal euthanasia technician a person must:

3 (1) Apply at least thirty days prior to the date the next written examinations are scheduled, using a form prescribed by the board;

6 (2) Have a high school diploma or GED;

9 (4) Complete the certified animal euthanasia technician's program established by the board;
(5) Pass the written and practical skills examinations;
(6) Pass the prescribed background check; and
(7) Complete all the other requirements established by
the board.

(b) A certified animal euthanasia technician may
practice animal euthanasia at a legally operated animal
control facility.

(c) A person certified as an animal euthanasia technician
by the board prior to July 1, 2010, shall for all purposes be
considered certified under this article and may renew
pursuant to the provisions of this article.

(d) A person certified by another state or jurisdiction
with certification requirements equivalent to, or exceeding,
the certification standards of this state may be issued a
certification under this section upon the submission of a
completed application and the appropriate fees, as
established by the board in legislative rules.

CHAPTER 181

(Com. Sub. for H. B. 4023 - By Delegates Summers,
Ellington, Householder, Rohrbach, Hollen, Dean and
Butler)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to repeal §30-7C-9 of the Code of West Virginia, 1931,
as amended; and to amend and reenact §30-7C-3 of said code,
all relating to the regulation of dialysis technicians;
establishing temporary permit time-frames; clarifying that
permit holder is eligible to renew his or her permit; and repealing an advisory council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7C. DIALYSIS TECHNICIANS.

§30-7C-3. Qualifications; exceptions; application form and fees.

(a) To be certified by the board as a dialysis technician, an individual shall demonstrate that he or she:

(1) Is of good moral character;

(2) Has acquired at least a high school diploma, general equivalency diploma or equivalent;

(3) Has successfully completed an approved dialysis technician training program;

(4) Has achieved national certification as a dialysis technician; and

(5) Has met such other qualifications required by the board by legislative rule.

(b) An applicant for certification shall file with the board an application as established by the board demonstrating that he or she has met the qualifications set forth in this section, and pay an application fee as established by legislative rule.

(c) (1) The board may, upon receipt of a completed application and fee in accordance with legislative rule, issue a temporary permit to practice as a dialysis technician to any applicant who has completed a board approved dialysis technician training program.

(2) A temporary permit is effective from the date of issuance until three days after the receipt by the applicant and the board of the results of the certification examination.
or after eighteen months whichever is sooner, unless the
board revokes the temporary permit prior to its expiration.

A temporary permit may be renewed one time for an
additional eighteen months from the renewal date unless the
board revokes the temporary permit prior to its expiration,
under the following circumstances:

(A) The national certification has lapsed, and

(B) A dialysis technician is required to work to qualify
for recertification.

(d) A dialysis technician previously licensed under this
article is continued to be licensed and is eligible to renew.

ARTICLE 7C. DIALYSIS TECHNICIANS.

§30-7C-9. Dialysis technician advisory council.

[Repealed.]
ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-11. Registration of pharmacy technicians.

(a) To be eligible for registration as a pharmacy technician to assist in the practice of pharmacist care, the applicant shall:

1. Submit a written application to the board;
2. Pay the applicable fees;
3. Have graduated from high school or obtained a Certificate of General Educational Development (GED) or equivalent;
4. Have:
   (A) Graduated from a competency-based pharmacy technician education and training program as approved by legislative rule of the board;
   (B) Completed a pharmacy-provided, competency-based education and training program approved by the board; or
   (C) Obtained a national certification as a pharmacy technician and have practiced in another jurisdiction for a period of time as determined by the board.
5. Have successfully passed an examination developed using nationally recognized and validated psychometric and pharmacy practice standards approved by the board;
6. Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;
(7) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license, which conviction remains unreversed;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted bearing a rational nexus to the practice of pharmacist care, which conviction remains unreversed; and

(9) Have fulfilled any other requirement specified by the board in rule.

(b) A person whose license to practice pharmacist care has been denied, revoked, suspended, or restricted for disciplinary purposes in any jurisdiction is not eligible to be registered as a pharmacy technician.

(c) A person registered to assist in the practice pharmacist care issued by the board shall for all purposes be considered registered under this article and may renew pursuant to the provisions of this article.

CHAPTER 183

(Com. Sub. for H. B. 4027 - By Delegates Ellington, Summers, Householder, Rohrbach, Hollen and Dean)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3-16, all relating to creating an education permit for allopathic physician resident; prohibiting the practice of medicine and surgery without an
authorization from the board; removing an exemption; providing an application process; providing criteria to obtain the permit; and providing emergency rulemaking authority; and providing rulemaking authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Licensing requirements for the practice of medicine and surgery or podiatry; exceptions; unauthorized practice; notice; criminal penalties.

(a) It is unlawful for any person who does not hold an active, unexpired license issued pursuant to this article, or who is not practicing pursuant to the licensure exceptions set forth in this section, to:

1. Engage in the practice of medicine and surgery or podiatry in this state;

2. Represent that he or she is a physician, surgeon or podiatrist authorized to practice medicine and surgery or podiatry in this state; or

3. Use any title, word or abbreviation to indicate or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state.

(b) It is unlawful for any person who does not hold an active, unexpired license issued pursuant to this article to engage in the practice of telemedicine within this state. As used in this section, the “practice of telemedicine” means the practice of medicine using communication tools such as electronic communication, information technology or other means of interaction between a licensed health care professional in one location and a patient in another location, with or without an intervening health care provider, and typically involves secure real time audio/video conferencing or similar secure audio/video services, remote monitoring, interactive video and store and
forward digital image or health data technology to provide
or support health care delivery by replicating the interaction
of a traditional in person encounter between a provider and
a patient. The practice of telemedicine occurs in this state
when the patient receiving health care services through a
telemedicine encounter is physically located in this state.

(c) It is not unlawful for a person:

(1) Who is a licensed health care provider under this
code to act within his or her scope of practice;

(2) Who is not a licensed health care professional in this
state to provide first aid care in an emergency situation; or

(3) To engage in the bona fide religious tenets of any
recognized church in the administration of assistance to the
sick or suffering by mental or spiritual means.

(d) The following persons are exempt from the licensure
requirements under this article:

(1) A person enrolled in a school of medicine approved
by the Liaison Committee on Medical Education or by the
board;

(2) A person enrolled in a school of podiatric medicine
approved by the Council of Podiatry Education or by the
board;

(3) A person engaged in graduate podiatric training in a
program approved by the Council on Podiatric Education or
by the board;

(4) A physician or podiatrist engaged in the
performance of his or her official duties holding one or more
licenses from another state or foreign country and who is a
commissioned medical officer of, a member of or employed
by:

(A) The United States Military;
56    (B) The Department of Defense;
57    (C) The United States Public Health Service; or
58    (D) Any other federal agency;
59
60    (5) A physician or podiatrist holding one or more
61 unrestricted licenses granted by another state or foreign
62 country serving as visiting medical faculty engaged in
63 education, training or research duties at a medical school or
64 institution recognized by the board for up to six months if:
65
66    (A) The physician does not engage in the practice of
67 medicine and surgery or podiatry outside of the auspices of
68 the sponsoring school or institution; and
69
70    (B) The sponsoring medical school or institution
71 provides prior written notification to the board including the
72 physician’s name, all jurisdictions of licensure and the
73 beginning and end date of the physician’s visiting medical
74 faculty status;
75
76    (6) A physician or podiatrist holding one or more
77 unrestricted licenses granted by another state present in the
78 state as a member of an air ambulance treatment team or
79 organ harvesting team;
80
81    (7) A physician or podiatrist holding one or more
82 unrestricted licenses granted by another state or foreign
83 country providing a consultation on a singular occasion to a
84 licensed physician or podiatrist in this state, whether the
85 consulting physician or podiatrist is physically present in
86 the state for the consultation or not;
87
88    (8) A physician or podiatrist holding one or more
89 unrestricted licenses granted by another state or foreign
90 country providing teaching assistance, in a medical
91 capacity, for a period not to exceed seven days;
92
93    (9) A physician or podiatrist holding one or more
94 unrestricted licenses granted by another state or foreign
country serving as a volunteer in a noncompensated role for
a charitable function for a period not to exceed seven days;
and

(10) A physician or podiatrist holding one or more
unrestricted licenses granted by another state or foreign
country providing medical services to a college or
university affiliated and/or sponsored sports team or an
incorporated sports team if:

(A) He or she has a written agreement with that sports
team to provide care to team members, band member,
cheerleader, mascot, coaching staff and families traveling
with the team for a specific sporting event, team appearance
or training camp occurring in this state;

(B) He or she may only provide care or consultation to
team members, coaching staff and families traveling with
the team no longer than seven consecutive days per sporting
event;

(C) He or she is not authorized to practice at a health
care facility or clinic, acute care facility or urgent care
center located in this state, but the physician may
accompany the patient to the facility and consult; and

(D) The physician or podiatrist may be permitted, by
written permission from the executive director, to extend his
or her authorization to practice medicine for a maximum of
seven additional consecutive days if the requestor shows
good cause for the extension.

(e) A physician or podiatrist who does not hold a license
issued by the board and who is practicing medicine in this
state pursuant to the exceptions to licensure set forth in this
section may practice in West Virginia under one or more of
the licensure exceptions for no greater than a cumulative
total of thirty days in any one calendar year.

(f) The executive director shall send by certified mail to
a physician not licensed in this state a written order that
revokes the privilege to practice medicine under this section if the executive director finds good cause to do so. If no current address can be determined, the order may be sent by regular mail to the physician’s last known address.

(g) A person who engages in the unlawful practice of medicine and surgery or podiatry while holding a license issued pursuant to this article which has been classified by the board as expired for ninety days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or confined in jail not more than twelve months, or both fined and confined.

(h) A person who is found to be engaging in the practice of medicine and: (1) Has never been licensed by the board under this article; (2) holds a license which has been classified by the board as expired for greater than ninety days; or (3) holds a license which has been placed in inactive status, revoked, suspended or surrendered to the board is guilty of a felony and, upon conviction, shall be fined not more than $10,000 or imprisoned in a correctional facility for not less than one year nor more than five years or both fined and imprisoned.

(i) Upon a determination by the board that any report or complaint submitted to it concerns allegations of the unlawful practice of medicine and surgery by an individual who is licensed under another article of this chapter, the board shall refer the complaint to the appropriate licensing authority. Additionally, whenever the board receives credible information that an individual is engaging in the unlawful practice of medicine and surgery or podiatry in violation of this section, the board may report such information to the appropriate state and/or federal law enforcement authority and/or prosecuting attorney.

§30-3-16. Educational Permit.

(a) Beginning July 1, 2019, no person shall participate in a program of graduate medical training in this state unless
such person holds a license to practice medicine and surgery in this state or has been issued an educational permit issued by the board.

(b) An educational permit issued by the board authorizes the recipient to practice medicine and surgery only within the parameters of the recipient’s training program.

(c) An applicant for an educational permit shall file an application with the board and furnish evidence establishing that the applicant has satisfied the following requirements:

(1) The applicant is eighteen years of age or over;

(2) The applicant has paid the applicable fee;

(3) The applicant is of good moral character;

(4) The applicant has:

(A) Graduated from an allopathic college approved by the Liaison Committee on Medical Education;

(B) Graduated from a medical college that meets requirements for certification by the Educational Commission for Foreign Medical Graduates; or

(C) Completed an alternate pathway for meeting initial entry requirements or prerequisite or transfer requirements recognized by the Accreditation Council for Graduate Medical Education;

(5) The applicant:

(A) Is under contract as a resident in a program of post-graduate clinical training approved by the Accreditation Council for Graduate Medical Education; or

(B) Has completed a residency program approved by the Accreditation Council for Graduate Medical Education or a residency program recognized by the Educational
Commission for Foreign Medical Graduates and is under contract as a fellow in an approved program of postgraduate clinical training sponsored by an institution that is accredited to provide graduate medical education;

(6) The applicant has never held a license to practice medicine and surgery in West Virginia; and

(7) The applicant has fulfilled any other reasonable requirement specified in rule by the Board.

(d) An educational permit shall be valid for up to one year of postgraduate training. An educational permit may be renewed if the holder remains eligible to receive a renewed permit.

(e) The Board may deny an application or suspend or revoke a permit at any time upon grounds defined by the board by legislative rule.

(f) In order to give timely effect to this section, the board may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code, including:

(1) An implementation schedule for the issuance of educational permits prior to July 1, 2019;

(2) The extent to which residents and fellows may practice medicine and surgery pursuant to an educational permit;

(3) Criteria for the issuance of reciprocal educational permits for out of state allopathic medical residents seeking to complete a residency rotation in West Virginia;

(4) Requirements for educational permits and the renewal of such permits, including eligibility criteria for renewal;

(5) Criteria for when an educational permit application may be denied;
(6) Grounds for permit suspension or revocation;

(7) A fee schedule;

(8) Procedures for transitioning existing medical education trainees prior to implementation; and

(9) Any other rules necessary to effectuate and implement the provisions of this section.

CHAPTER 184

(Com. Sub. for H. B. 4156 - By Delegates Summers, Ellington, Espinosa, Householder and Frich)

[Passed March 10, 2018; in effect from passage.]  
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §30-7-1 and §30-7-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §30-7-5a; and to amend and reenact §30-7A-8 of said code; and, all relating to the regulation of nursing schools; defining terms; modifying accreditation standards for registered nursing schools; modifying accreditation standards for practical nursing schools; requiring national accreditation of registered nursing schools; setting out school of nursing faculty requirements; establishing the qualifications nursing school faculty members; providing an exception to the qualification of nursing school faculty and permitting practical nursing programs to be regulated by the board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1. Definitions.
As used in this article:

“Advanced practice registered nurse” means a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination;

“Board” means the West Virginia Board of Examiners for Registered Professional Nurses;

“Collaborative relationship” means a working relationship, structured through a written agreement, in which an advanced practice registered nurse may prescribe drugs in collaboration with a qualified physician;

“Direct patient care” means the provision of services to a sick, injured, mentally or physically disabled, elderly or fragile patient that requires some degree of interaction with that patient. Direct patient care may include assessment, treatment, counseling, procedures, self-care, patient education, administration of medication, and implementation of a care plan;

“Practice of registered professional nursing” or “registered professional nursing” means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, a licensed dentist or a licensed
36 advanced practice registered nurse, or the application of
37 such nursing procedures as involve understanding of cause
38 and effect in order to safeguard life and health of a patient
39 and others; and
40
41 “Temporary permit” means a permit authorizing the
42 holder to practice registered professional nursing in this
43 state until such permit is no longer effective or the holder is
44 granted a license by the West Virginia State Board of
45 Examiners for Registered Professional Nurses.

§30-7-5. Schools of nursing.

1 (a) A nursing program is determined to be board
2 approved if the program is accredited by a national nursing
3 accrediting agency recognized by the United States
4 Department of Education. The accreditation is considered
5 board approved and is exempt from board rules that require
6 ongoing approval if the school or program maintains this
7 accreditation.

8 (b) By July 1, 2022, all nursing programs shall be
9 accredited by a national accrediting agency recognized by
10 the United States Department of Education. A program
11 created after July 1, 2018, shall have 5 years to obtain
12 accreditation by an accrediting agency recognized by the
13 United States Department of Education.

14 (c) The board may require information concerning the
15 nursing program to be reported to the board by legislative
16 rule. The requested information shall be consistent with
17 information already being collected by the schools which is
18 required to maintain the program’s accreditation.

19 (d) The board shall approve a new nursing program until
20 the program is accredited by a national nursing accrediting
21 agency recognized by the United States Department of
22 Education.

§30-7-5a. Schools of nursing faculty requirements.
(a) Full-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor’s degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor’s degree with a major in nursing and at least 10 years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years’ experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined by board guidelines and function under the guidance of a faculty member fully qualified in the specific teaching area and professional competence; and

(3) Have credentials which verify status as a registered professional nurse in West Virginia.

(b) Part-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor’s degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor’s degree with a major in nursing and at least two years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years’ experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined by board guidelines and function under the guidance of a faculty member fully
qualified in the specific teaching area and professional
competence; and

(3) Have credentials which verify status as a registered
professional nurse in West Virginia.

(c) The board may grant an exception to the
requirements in §30-7-5a(a) and §30-7-5a(b) of this code
for faculty members who have qualifications other than
those set forth in these subsections which are acceptable to
the board.

ARTICLE 7A. PRACTICAL NURSES.

§30-7A-8. Schools of practical nursing.

(a) A practical nursing program is determined to be
board approved if approved by the board, or the program is
accredited by a national accrediting agency recognized by
the United States Department of Education. The
accreditation is considered board approved and is exempt
from board rules that require ongoing approval if the school
or program maintains this accreditation.

(b) By July 1, 2022, all practical nursing programs shall
be accredited by a national accrediting agency recognized
by the United States Department of Education. A program
created after July 1, 2018, shall have 5 years to obtain
accreditation by an accrediting agency recognized by the
United States Department of Education.

(c) The board may require information concerning the
practical nursing program to be reported to the board by
legislative rule. The requested information shall be consistent
with information already being collected by the schools which
is required to maintain the program’s accreditation.

(d) The board shall approve a new practical nursing
program until the program is accredited by a national
accrediting agency recognized by the United States
Department of Education.
AN ACT to amend and reenact §31-17A-4, §31-17A-6 and §31-17A-9 of the Code of West Virginia, 1931, as amended, all relating to the licensing requirements of mortgage loan originators; increasing the number of hours of education required for licensure and to meet continuing education requirements; and increasing the licensure application fee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-4. State license application and issuance.

(a) Applicants for a license must apply in a form as prescribed by the commissioner. Each form shall contain content as set forth by instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this article. The application must be submitted with an application fee of $200 plus the actual cost of fingerprint processing, together with any processing fee assessed by the Nationwide Mortgage Licensing System and Registry. The commissioner may elect to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations that serve the housing needs of households or persons below the HUD-established median
income for their area of residence. Any waiver of fees or other costs under this paragraph shall not be construed as a waiver of the duty to comply with all other provisions of this article.

(b) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

c) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant’s identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

d) To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a
channeling agent for requesting information from and
distributing information to the Department of Justice or any
governmental agency.

(e) To reduce the points of contact which the
commissioner may have to maintain, the commissioner may
use the Nationwide Mortgage Licensing System and
Registry as a channeling agent for requesting and
distributing information to and from any source so directed
by the commissioner.

(f) Nonresident mortgage loan originators licensed
under this article by their acceptance of the license
acknowledge that they are subject to the jurisdiction of the
courts of West Virginia and the service of process pursuant
to §46A-2-137 and §56-3-33 of this code.

(g) The commissioner may grant a provisional license
to a mortgage loan originator who has met all other
requirements for licensing under this article but: (1) Has not
passed a test regarding West Virginia mortgage laws and
regulations required for licensure: Provided, That the
 provisionally licensed mortgage loan originator takes and
passes that test within 60 days of the test becoming
 available; or (2) for whom the commissioner has not
received the results of a criminal background check despite
the good faith effort of the applicant to provide in a timely
manner the information necessary to obtain a criminal
background check.

§31-17A-6. Prelicensing and relicensing education of loan
originators.

(a) To meet the prelicensing education requirement, a
person must complete at least 24 hours of education
approved in accordance with subsection (b) of this section,
which shall include at least:

(1) Three hours of federal law and regulations;
(2) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) Four hours of training related to West Virginia mortgage and consumer laws or issues.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or the Division based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry or the Division, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry or the Division in subdivisions (1), (2) and (3) subsection (a) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in West Virginia.

(f) A person previously licensed under this article subsequent to July 1, 2009, applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

(a) To meet the annual continuing education requirements, a licensed mortgage loan originator must complete at least nine hours of education approved in accordance with subsection (b) of this section, which shall include at least:

   (1) Three hours of federal law and regulations;

   (2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

   (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

   (4) Two hours of West Virginia law or regulations.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or the Division based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

   (1) Except for §31-17A-8(b) of this code and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and
(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator’s own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1), (2) and (3), subsection (a) of this section for any state shall be accepted as credit towards completion of continuing education requirements in West Virginia.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the renewal requirements of §31-17A-8(a)(1) and §31-17A-8(a)(3) of this code may make up any deficiency in continuing education as established by the commissioner.

CHAPTER 186

(H. B. 4332 - By Delegates Rohrbach, Fleischauer, Longstreth, Summers and Frich)
pharmacy practice act; allowing home peritoneal renal dialysis equipment and drugs to be distributed to patients with end state renal disease; providing for payment by Medicaid under the current benefit structure; and exempting cashiers from licensure under the Larry W. Border Pharmacy Practice Act.

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

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.**

**§30-5-22. Pharmacies to be registered.**

1. (a) A pharmacy, an ambulatory health care facility, and a charitable clinic pharmacy shall register with the board.

2. (b) A person desiring to operate, maintain, open or establish a pharmacy shall register with the board.

3. (c) To be eligible for a registration to operate, maintain, open or establish a pharmacy the applicant shall:

4. (1) Submit a written application to the board;

5. (2) Pay all applicable fees;

6. (3) Designate a pharmacist-in-charge; and

7. (4) Successfully complete an inspection by the board.

8. (d) A separate application shall be made and separate registration issued for each location.

9. (e) Registration is not transferable.

10. (f) Registration expire and shall be renewed annually.

11. (g) If a registration expires, the pharmacy shall be reinspected and an inspection fee is required.

12. (h) A registrant shall employ a pharmacist-in-charge and operate in compliance with the legislative rules
governing the practice of pharmacist care and the operation
of a pharmacy.

(i) The provisions of this section do not apply to the sale
of nonprescription drugs which are not required to be
dispensed pursuant to a practitioner’s prescription.

(j) The provisions of this section do not apply to the sale
or distribution of dialysate, drugs or devices necessary to
perform home peritoneal renal dialysis to patients with end
state renal disease, provided the requirements of §30-5-29
of this code are met.

§30-5-29. Limitations of article.

(a) This article may not be construed to prevent, restrict
or in any manner interfere with the sale of nonnarcotic
nonprescription drugs which may be lawfully sold without
a prescription in accordance with the United States Food,
Drug and Cosmetic Act or the laws of this state, nor may
any legislative rule be adopted by the board which shall
require the sale of nonprescription drugs by a licensed
pharmacist or in a pharmacy or which shall prevent, restrict
or otherwise interfere with the sale or distribution of such
drugs by any retail merchant. The sale or distribution of
nonprescription drugs may not be deemed to be improperly
engaging in the practice of pharmacist care.

(b) This article may not be construed to interfere with
any legally qualified practitioner of medicine, dentistry or
veterinary medicine, who is not the proprietor of the store
for the dispensing or retailing of drugs and who is not in the
employ of such proprietor, in the compounding of his or her
own prescriptions or to prevent him or her from supplying
to his or her patients such medicines as he or she may deem
proper, if such supply is not made as a sale.

(c) The exception provided in subsection (b) of this
section does not apply to an ambulatory health care facility:
Provided, That a legally licensed and qualified practitioner
of medicine or dentistry may supply medicines to patients
that he or she treats in a free clinic and that he or she deems appropriate.

(d) This article may not be construed to prevent, restrict or in any manner interfere with the sale or distribution of dialysate, drugs or devices necessary to perform home peritoneal renal dialysis to patients with end state renal disease, nor may any legislative rule be adopted by the board which shall require the sale or distribution of such peritoneal dialysis products by a licensed pharmacist or in a pharmacy, provided the following criteria are met:

(1) The dialysate, drugs or devices are approved or cleared by the Food and Drug Administration, as required by federal law.

(2) The dialysate, drugs or devices are lawfully held by a manufacturer or a manufacturer’s agent that has obtained the proper permit from the board as a manufacturer or wholesale distributor, or third-party logistics provider.

(3) The dialysate, drugs or devices are held and delivered in their original, sealed packaging from the manufacturing facility.

(4) The dialysate, drugs or devices are delivered only upon receipt of a physician’s prescription by a licensed pharmacy, and the transmittal of an order from the licensed pharmacy to the manufacturer or the manufacturer’s agent; and

(5) The manufacturer or a manufacturer’s agent delivers the dialysate, drugs, or devices directly to:

(A) A patient with chronic kidney failure, or his/her designee, for the patient’s self-administration of the dialysis therapy; or

(B) A health care provider or institution for administration or delivery of the dialysis therapy to a patient with chronic kidney failure.
(e) The provisions of §30-5-29(d) of this code shall not alter the manner in which dialysate, drugs, devices necessary to perform home peritoneal renal dialysis to patients with end state renal disease are billed by Medicaid under the current pharmacy benefit structure.

(f) A person who handles a prescription drug only during the point of sale to provide the prescription drug to a patient and accept payment is not subject to the licensure requirements of this article. This handling process includes the cashier having access to the pharmacy’s operating system to verify unique information for each patient. A pharmacy may require an individual to complete a criminal background check before he or she is hired.

CHAPTER 187

(H. B. 4486 - By Delegates White, Frich, Lane, Westfall, Queen, Dean, Martin, Eldridge, Phillips, Moore and Foster)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §32A-2-3 of the Code of West Virginia, 1931, as amended, relating to persons required to obtain a license to engage in the business of currency exchange, transportation, or transmission; and providing an exemption from licensure for certain entities which administer the Electronic Filing Depository system on behalf of state securities regulators.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

(a) The following are exempt from the provisions of this article:

(1) Banks, trust companies, foreign bank agencies, credit unions, savings banks, and savings and loan associations authorized to do business in the state or which qualify as federally insured depository institutions, whether organized under the laws of this state, any other state, or the United States;

(2) The United States and any department or agency of the United States;

(3) The United States Postal Service;

(4) This state and any political subdivision of this state;

(5) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency or instrumentality of the United States, or any state or any political subdivisions of a state;

(6) Persons engaged solely in the business of currency transportation who operate an armored car service in this state pursuant to licensure under §30-18-1 et seq. of this code: Provided, That the net worth of the licensee exceeds $5 million. The term “armored car service” as used in this article means a service provided by a person transporting or offering to transport, under armed security guard, currency or other things of value in a motor vehicle specially equipped to offer a high degree of security. Persons seeking to claim this exemption shall notify the commissioner of their intent to do so and demonstrate that they qualify for its use. Persons seeking an exemption under this subdivision are not exempt from the provisions of this article if they also engage in currency exchange or currency transmission;
(7) Persons engaged in the business of currency transportation whose activities are limited exclusively to providing services to federally insured depository institutions, or to any federal, state, or local governmental entities;

(8) Persons engaged solely in the business of removing currency from vending machines providing goods or services, if the machines are not used for gambling purposes or to convey any gambling ticket, token, or other device used in a game of chance;

(9) The State Regulatory Registry, LLC, which administers the Nationwide Mortgage Licensing System and Registry on behalf of states and federal banking regulators: and

(10) The North American Securities Administrators Association and any subsidiaries, which administer the Electronic Filing Depository system on behalf of state securities regulators.

(b) Any person who holds and maintains a valid license under this article may engage in the business of money transmission or currency exchange at one or more locations through or by means of an authorized delegate or delegates as set forth in section twenty-seven of this article, as the licensee may designate and appoint from time to time. No such authorized delegate is required to obtain a separate license under this article, but the use of sub-delegates is prohibited and the authorized delegate may only conduct business on behalf of its licensee.

(c) The issuance and sale of stored value cards or similar prepaid products which are intended to purchase items only from the issuer or seller of the stored value card is exempt from the provisions of this article.

(d) Any person who is required and properly obtains a license under this article to transport currency is exempt from the requirements of article eighteen, chapter thirty of this code.
AN ACT to amend the Code of West Virginia, 1931, as amended, by enacting a new section designated as § 30-5-12c, relating to establishing guidelines for the substitution of certain biological pharmaceuticals by pharmacists; defining terms; providing for guidelines relating to substitution of interchangeable biological products; establishing communication requirements between the pharmacists and prescriber relating to substitution of interchangeable biological products; requiring maintenance of records relating to biological products dispensed for at least two years; providing for emergency rules; establishing manufacturing standards; clarifying process for complaints; and providing for immunity for certain actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-12c. Substitution of biological product: Definitions; selection of interchangeable biological products; exceptions; records; labels; manufacturing standards; emergency rules; complaints; and immunity.

1 (a) As used in this section:

2 “Biological product” means the same as that term is defined in 42 U.S.C.§ 262.
“Brand name” means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label, or wrapping at the time of packaging.

“Interchangeable biological product” means a biological product that the federal Food and Drug Administration has:

1. Licensed and determined meets the standards for interchangeability pursuant to 42 U.S.C § 262(k)(4); or
2. Determined is therapeutically equivalent as set forth in the latest edition of or supplement to the federal Food and Drug Administration’s Approved Drug Products with Therapeutic Equivalence Evaluations.

“Proper name” means the nonproprietary name of a biological product.

“Substitute” means to dispense without the prescriber’s express authorization an interchangeable biological product in the place of the drug ordered or prescribed.

(b) Except as limited by subsection (c) and unless instructed otherwise by the patient, a pharmacist who receives a prescription for a specific biological product shall select a less expensive interchangeable biological product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient. The pharmacist shall provide notice to the patient or the patient’s designee regarding the selection of a less expensive interchangeable biological product.

(c) If, in the professional opinion of the prescriber, it is medically necessary that an equivalent drug product or interchangeable biological product not be selected, the prescriber may so indicate by certifying that the specific brand-name drug product prescribed, or the specific brand-name biological product prescribed, is medically necessary
for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the specific brand-name drug product prescribed, or the specific biological product prescribed is medically necessary.

(d) (1) Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist’s designee shall communicate the specific product provided to the patient, including the name of the product and the manufacturer, to the prescriber through any of the following electronic records systems:

   (A) An interoperable electronic medical records system;

   (B) An electronic prescribing technology;

   (C) A pharmacy benefit management system; or

   (D) A pharmacy record.

   (2) Communication through an electronic records system as described in §30-5-12c(d)(1) of this code is presumed to provide notice to the prescriber.

   (3) If the pharmacist is unable to communicate pursuant to an electronic records system the pharmacist shall communicate to the prescriber which biological product was dispensed to the patient using facsimile, telephone, electronic transmission, or other prevailing means.

   (4) Communication is not required under this subsection when:

   (A) There is no Federal Food and Drug Administration approved interchangeable biological product for the product prescribed; or

   (B) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.
(e) The pharmacist shall maintain a record of the biological product dispensed for at least two years. Such record shall include the manufacturer and proper name of the interchangeable biological product selected.

(f) All biological products shall be labeled in accordance with the instructions of the practitioner.

(g) Unless the practitioner directs otherwise, the prescription label on all biological products dispensed by the pharmacist shall indicate the proper name using abbreviations, if necessary, and either the name of the manufacturer or packager, whichever is applicable, in the pharmacist’s discretion. The same notation will be made on the original prescription retained by the pharmacist.

(h) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the biological product has been manufactured with the following minimum good manufacturing standards and practices by:

(1) Labeling products with the name of the original manufacturer and control number;

(2) Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;

(3) Marking products with identification code or monogram; and

(4) Labeling products with an expiration date.

(i) The West Virginia Board of Pharmacy shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code setting standards for substituted interchangeable biological products, obtaining compliance with the provisions of this section, and enforcing the provisions of this section.
(j) Any person shall have the right to file a complaint with the West Virginia Board of Pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the Board of Pharmacy.

(k) No pharmacist or pharmacy complying with the provisions of this section shall be liable in any way for the dispensing of an interchangeable biological product substituted under the provisions of this section, unless the interchangeable biological product was incorrectly substituted.

(l) In no event where the pharmacist substitutes an interchangeable biological product under the provisions of this section shall the prescribing physician be liable in any action for loss, damage, injury, or death of any person occasioned by or arising from, the use of the substitute biological product unless the original biological product was incorrectly prescribed.

(m) Failure of a practitioner to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the practitioner had reasonable cause to believe that the health of the patient required the use of a certain product and no other.

CHAPTER 189

(Com. Sub. for S. B. 267 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 20, 2018; in effect July 1, 2018.]
[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-9A-8 of said code; and to amend and reenact §18A-4-2 and §18A-4-8a of said code, all relating to increasing compensation for
certain public employees; increasing the annual salaries of members of the West Virginia State Police; increasing the minimum salaries payable to public school teachers and professional personnel during the contract year; and increasing the minimum monthly pay for public school service personnel.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

*§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VIII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.
(d) Beginning on July 1, 2018, members shall receive annual salaries payable at least twice per month as follows:

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**SUPERVISORY AND NONSUPERVISORY RANKS**

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<th>Rank</th>
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<td>Major</td>
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**ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION**

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<td>$43,130</td>
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<tr>
<td>II</td>
<td>$43,912</td>
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</table>
Beginning July 1, 2019, the annual salaries for members of each of the West Virginia State Police, the Administration Support Specialists, and the Criminalist classifications set forth in the schedules in this subsection shall be increased an additional $432.

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in §15-2-5(e) of this code and supplemental pay as provided in §15-2-5(g) of this code.
(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in §15-2-5(d) of this code for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of $500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.
The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 et seq. of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the West Virginia State Police’s payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members’ participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the
member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-8. Foundation allowance for professional student support services.

(a) The basic foundation allowance to the county for professional student support personnel shall be the amount of money determined in accordance with the following:

(1) The sum of the state minimum salaries, as determined in accordance with the provisions of §18-4-1 et seq. of this code, for all state aid eligible school nurse and counselor positions in the county during the 2008 fiscal year which number shall be reduced in the same proportion as the number of professional educators allowed to be funded under §18-9A-4 of this code to the total number of professional educators employed that are state aid eligible. In performing this calculation, the numerator shall be the number of professional educators actually funded under §18-9A-4 of this code and the denominator shall be the total number of professional educators employed that are eligible to be funded under §18-9A-4 of this code;

(2) The amount derived from the calculation in §18-9A-8(a)(1) of this code is increased by one half percent;
(3) The amount derived from the calculation in §18-9A-8(a)(2) of this code is the basic foundation allowance to the county for professional student support personnel for the 2009 fiscal year;

(4) For fiscal years 2010, 2011, 2012, and 2013, the basic foundation allowance to the county for professional student support personnel increases by one-half percent per year over the allowance for the previous year; and

(5) For all fiscal years thereafter, the basic foundation allowance to the county for professional student support personnel remains the same amount as in the 2013 fiscal year, plus any additional amount of funding necessary to cover the increases in the State Minimum Salary Schedule set forth in §18A-4-2 of this code effective for the fiscal year beginning July 1, 2018, and thereafter.

(b) The additional positions for counselors that may be created as a result of the one percent increase provided pursuant to this section shall be assigned to schools where the counselor can:

(1) Enhance student achievement;

(2) Provide early intervention for students in grades prekindergarten through five; and

(3) Enhance student development and career readiness.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

*§18A-4-2. State minimum salaries for teachers.*

(a) It is the goal of the Legislature to increase the state minimum salary for teachers with zero years of experience and an A. B. degree, including the equity supplement, to at least $43,000 by fiscal year 2019.

*NOTE: This section was also amended by H. B. 4145 (Chapter 193) which passed subsequent to this act.*
(b) (1) For school year 2018–2019, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

STATE MINIMUM SALARY SCHEDULE

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<td>20</td>
<td>35,531</td>
<td>36,220</td>
<td>36,486</td>
<td>41,739</td>
<td>42,500</td>
<td>44,267</td>
<td>45,028</td>
<td>45,789</td>
</tr>
<tr>
<td>21</td>
<td>35,860</td>
<td>36,548</td>
<td>36,814</td>
<td>42,257</td>
<td>43,018</td>
<td>44,786</td>
<td>45,547</td>
<td>46,307</td>
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<tr>
<td>22</td>
<td>36,188</td>
<td>36,876</td>
<td>37,142</td>
<td>42,776</td>
<td>43,537</td>
<td>45,304</td>
<td>46,065</td>
<td>46,826</td>
</tr>
<tr>
<td>23</td>
<td>36,516</td>
<td>37,204</td>
<td>37,470</td>
<td>43,295</td>
<td>44,055</td>
<td>45,823</td>
<td>46,584</td>
<td>47,344</td>
</tr>
<tr>
<td>24</td>
<td>36,844</td>
<td>37,532</td>
<td>37,798</td>
<td>43,813</td>
<td>44,574</td>
<td>46,342</td>
<td>47,102</td>
<td>47,863</td>
</tr>
<tr>
<td>25</td>
<td>37,172</td>
<td>37,860</td>
<td>38,126</td>
<td>44,332</td>
<td>45,092</td>
<td>46,860</td>
<td>47,621</td>
<td>48,382</td>
</tr>
<tr>
<td>26</td>
<td>37,500</td>
<td>38,188</td>
<td>38,454</td>
<td>44,850</td>
<td>45,611</td>
<td>47,379</td>
<td>48,139</td>
<td>49,900</td>
</tr>
</tbody>
</table>
(2) For school year 2019–2020, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section, plus $404; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

(3) For school year 2020–2021, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section, plus $808; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

c) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

d) To meet the objective of salary equity among the counties as set forth in §18A-4-5 of this code, each teacher shall be paid an equity supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:
(1) For “4th Class” at zero years of experience, $1,781. An additional $38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For “3rd Class” at zero years of experience, $1,796. An additional $67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For “2nd Class” at zero years of experience, $1,877. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For “A. B.” at zero years of experience, $2,360. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For “A. B. + 15” at zero years of experience, $2,452. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For “M. A.” at zero years of experience, $2,644. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For “M. A. + 15” at zero years of experience, $2,740. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For “M. A. + 30” at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For “M. A. + 45” at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For “Doctorate” at zero years of experience, $2,927. An additional $69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this
section and article and any county supplement in effect in a
county pursuant to §18A-4-5a of this code; (ii) shall be paid
in equal monthly installments; and (iii) shall be considered
a part of the state minimum salaries for teachers.

*§18A-4-8a. Service personnel minimum monthly salaries.*

(a) The minimum monthly pay for each service employee shall be as follows:

(1) For school year 2018–2019, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

STATE MINIMUM SALARY SCHEDULE

<table>
<thead>
<tr>
<th>Years Exp</th>
<th>PAY GRADE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
</tr>
<tr>
<td>0</td>
<td>1,704</td>
</tr>
<tr>
<td>1</td>
<td>1,736</td>
</tr>
<tr>
<td>2</td>
<td>1,769</td>
</tr>
<tr>
<td>3</td>
<td>1,801</td>
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<td>1,834</td>
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<tr>
<td>5</td>
<td>1,867</td>
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<tr>
<td>6</td>
<td>1,899</td>
</tr>
<tr>
<td>7</td>
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<tr>
<td>8</td>
<td>1,966</td>
</tr>
<tr>
<td>9</td>
<td>1,998</td>
</tr>
<tr>
<td>10</td>
<td>2,031</td>
</tr>
<tr>
<td>11</td>
<td>2,064</td>
</tr>
</tbody>
</table>

*NOTE: This section was also amended by H. B. 4145 (Chapter 193) which passed subsequent to this act.
|    | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20  | 21  | 22  | 23  | 24  | 25  | 26  | 27  | 28  | 29  | 30  | 31  | 32  | 33  | 34  | 35  | 36  | 37  | 38  | 39  | 40  |
|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 12 | 2,096 | 2,118 | 2,159 | 2,213 | 2,266 | 2,329 | 2,360 | 2,434 |
| 13 | 2,129 | 2,150 | 2,192 | 2,245 | 2,298 | 2,361 | 2,393 | 2,467 |
| 14 | 2,162 | 2,183 | 2,225 | 2,278 | 2,331 | 2,394 | 2,426 | 2,499 |
| 15 | 2,194 | 2,216 | 2,257 | 2,310 | 2,363 | 2,427 | 2,458 | 2,532 |
| 16 | 2,227 | 2,248 | 2,290 | 2,343 | 2,396 | 2,459 | 2,491 | 2,565 |
| 17 | 2,259 | 2,281 | 2,324 | 2,376 | 2,429 | 2,492 | 2,524 | 2,598 |
| 18 | 2,292 | 2,314 | 2,356 | 2,408 | 2,461 | 2,525 | 2,556 | 2,631 |
| 19 | 2,326 | 2,346 | 2,389 | 2,441 | 2,494 | 2,557 | 2,589 | 2,663 |
| 20 | 2,358 | 2,379 | 2,422 | 2,475 | 2,527 | 2,590 | 2,622 | 2,697 |
| 21 | 2,391 | 2,411 | 2,454 | 2,507 | 2,559 | 2,623 | 2,654 | 2,731 |
| 22 | 2,424 | 2,445 | 2,487 | 2,540 | 2,592 | 2,656 | 2,688 | 2,763 |
| 23 | 2,456 | 2,478 | 2,520 | 2,573 | 2,626 | 2,690 | 2,722 | 2,797 |
| 24 | 2,489 | 2,510 | 2,552 | 2,605 | 2,658 | 2,724 | 2,755 | 2,831 |
| 25 | 2,522 | 2,543 | 2,585 | 2,638 | 2,692 | 2,756 | 2,789 | 2,863 |
| 26 | 2,554 | 2,576 | 2,617 | 2,672 | 2,726 | 2,790 | 2,821 | 2,897 |
| 27 | 2,587 | 2,608 | 2,650 | 2,704 | 2,758 | 2,822 | 2,855 | 2,930 |
| 28 | 2,620 | 2,641 | 2,684 | 2,738 | 2,792 | 2,856 | 2,889 | 2,964 |
| 29 | 2,652 | 2,675 | 2,717 | 2,770 | 2,825 | 2,890 | 2,921 | 2,998 |
| 30 | 2,686 | 2,707 | 2,751 | 2,804 | 2,858 | 2,922 | 2,955 | 3,031 |
| 31 | 2,719 | 2,741 | 2,785 | 2,838 | 2,892 | 2,956 | 2,989 | 3,064 |
| 32 | 2,753 | 2,774 | 2,817 | 2,871 | 2,924 | 2,990 | 3,021 | 3,098 |
| 33 | 2,787 | 2,807 | 2,851 | 2,905 | 2,958 | 3,022 | 3,055 | 3,131 |
| 34 | 2,819 | 2,841 | 2,885 | 2,939 | 2,992 | 3,056 | 3,089 | 3,164 |
| 35 | 2,853 | 2,875 | 2,917 | 2,971 | 3,024 | 3,090 | 3,122 | 3,198 |
| 36 | 2,887 | 2,908 | 2,951 | 3,005 | 3,059 | 3,123 | 3,156 | 3,230 |
| 37 | 2,919 | 2,942 | 2,985 | 3,039 | 3,093 | 3,157 | 3,189 | 3,264 |
| 38 | 2,953 | 2,974 | 3,017 | 3,071 | 3,125 | 3,190 | 3,222 | 3,298 |
| 39 | 2,987 | 3,008 | 3,051 | 3,105 | 3,159 | 3,223 | 3,256 | 3,330 |
(2) For school year 2019–2020, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade, plus $22; and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade, plus $11.

(3) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>PAY GRADE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountant I</td>
<td>D</td>
</tr>
<tr>
<td>Accountant II</td>
<td>E</td>
</tr>
<tr>
<td>Accountant III</td>
<td>F</td>
</tr>
<tr>
<td>Accounts Payable Supervisor</td>
<td>G</td>
</tr>
<tr>
<td>Aide I</td>
<td>A</td>
</tr>
<tr>
<td>Aide II</td>
<td>B</td>
</tr>
<tr>
<td>Aide III</td>
<td>C</td>
</tr>
<tr>
<td>Aide IV</td>
<td>D</td>
</tr>
<tr>
<td>Audiovisual Technician</td>
<td>C</td>
</tr>
<tr>
<td>Auditor</td>
<td>G</td>
</tr>
<tr>
<td>Autism Mentor</td>
<td>F</td>
</tr>
<tr>
<td>Braille Specialist</td>
<td>E</td>
</tr>
<tr>
<td>Page</td>
<td>Position</td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>1704</td>
<td>Bus Operator</td>
</tr>
<tr>
<td></td>
<td>Buyer</td>
</tr>
<tr>
<td></td>
<td>Cabinetmaker</td>
</tr>
<tr>
<td></td>
<td>Cafeteria Manager</td>
</tr>
<tr>
<td></td>
<td>Carpenter I</td>
</tr>
<tr>
<td></td>
<td>Carpenter II</td>
</tr>
<tr>
<td></td>
<td>Chief Mechanic</td>
</tr>
<tr>
<td></td>
<td>Clerk I</td>
</tr>
<tr>
<td></td>
<td>Clerk II</td>
</tr>
<tr>
<td></td>
<td>Computer Operator</td>
</tr>
<tr>
<td></td>
<td>Cook I</td>
</tr>
<tr>
<td></td>
<td>Cook II</td>
</tr>
<tr>
<td></td>
<td>Cook III</td>
</tr>
<tr>
<td></td>
<td>Crew Leader</td>
</tr>
<tr>
<td></td>
<td>Custodian I</td>
</tr>
<tr>
<td></td>
<td>Custodian II</td>
</tr>
<tr>
<td></td>
<td>Custodian III</td>
</tr>
<tr>
<td></td>
<td>Custodian IV</td>
</tr>
<tr>
<td></td>
<td>Director or Coordinator of Services</td>
</tr>
<tr>
<td></td>
<td>Draftsman</td>
</tr>
<tr>
<td></td>
<td>Early Childhood Classroom Assistant Teacher I</td>
</tr>
<tr>
<td></td>
<td>Early Childhood Classroom Assistant Teacher II</td>
</tr>
</tbody>
</table>
Ch. 189] PUBLIC EMPLOYEES

62 Early Childhood Classroom Assistant Teacher III ..............F
63 Educational Sign Language Interpreter I .........................F
64 Educational Sign Language Interpreter II ......................G
65 Electrician I .................................................................F
66 Electrician II .................................................................G
67 Electronic Technician I ....................................................F
68 Electronic Technician II ...................................................G
69 Executive Secretary .........................................................G
70 Food Services Supervisor .................................................G
71 Foreman .................................................................G
72 General Maintenance .......................................................C
73 Glazier ...............................................................D
74 Graphic Artist ..............................................................D
75 Groundsman .................................................................B
76 Handyman .................................................................B
77 Heating and Air Conditioning Mechanic I .........................E
78 Heating and Air Conditioning Mechanic II .......................G
79 Heavy Equipment Operator ..............................................E
80 Inventory Supervisor ......................................................D
81 Key Punch Operator ........................................................B
82 Licensed Practical Nurse ...............................................F
83 Locksmith .................................................................G
<table>
<thead>
<tr>
<th></th>
<th>Public Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>84</td>
<td>Lubrication Man</td>
</tr>
<tr>
<td>85</td>
<td>Machinist</td>
</tr>
<tr>
<td>86</td>
<td>Mail Clerk</td>
</tr>
<tr>
<td>87</td>
<td>Maintenance Clerk</td>
</tr>
<tr>
<td>88</td>
<td>Mason</td>
</tr>
<tr>
<td>89</td>
<td>Mechanic</td>
</tr>
<tr>
<td>90</td>
<td>Mechanic Assistant</td>
</tr>
<tr>
<td>91</td>
<td>Office Equipment Repairman I</td>
</tr>
<tr>
<td>92</td>
<td>Office Equipment Repairman II</td>
</tr>
<tr>
<td>93</td>
<td>Painter</td>
</tr>
<tr>
<td>94</td>
<td>Paraprofessional</td>
</tr>
<tr>
<td>95</td>
<td>Payroll Supervisor</td>
</tr>
<tr>
<td>96</td>
<td>Plumber I</td>
</tr>
<tr>
<td>97</td>
<td>Plumber II</td>
</tr>
<tr>
<td>98</td>
<td>Printing Operator</td>
</tr>
<tr>
<td>99</td>
<td>Printing Supervisor</td>
</tr>
<tr>
<td>100</td>
<td>Programmer</td>
</tr>
<tr>
<td>101</td>
<td>Roofing/SHEET Metal Mechanic</td>
</tr>
<tr>
<td>102</td>
<td>Sanitation Plant Operator</td>
</tr>
<tr>
<td>103</td>
<td>School Bus Supervisor</td>
</tr>
<tr>
<td>104</td>
<td>Secretary I</td>
</tr>
<tr>
<td>105</td>
<td>Secretary II</td>
</tr>
</tbody>
</table>
(b) An additional $12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional $11 per month also is added to the minimum monthly pay of each service person for each of the following:

1. A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

2. A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

3. A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

4. A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional $40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate’s degree;

(2) A service person who holds a bachelor’s degree;

(3) A service person who holds a master’s degree;

(4) A service person who holds a doctorate degree.

(e) An additional $11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor’s degree plus 15 college hours;
(2) A service person who holds a master’s degree plus 15 college hours;

(3) A service person who holds a master’s degree plus 30 college hours;

(4) A service person who holds a master’s degree plus 45 college hours; and

(5) A service person who holds a master’s degree plus 60 college hours.

(f) To meet the objective of salary equity among the counties, each service person is paid an equity supplement, as set forth in §18A-4-5 of this code, of $164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person’s daily shift of work is performed between the hours of 6:00 p. m. and 5:00 a. m. the following day, the employee is paid no less than an additional $10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person’s usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.
(j) A service person may not have his or her daily work schedule changed during the school year without the employee’s written consent and the person’s required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one seventh of the person’s daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: Provided, however, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional $3 per hour or no less than $5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee’s regular employment county, the daily rate of pay is no less than...
the minimum amount as established in the employee’s regular 
employment county for asbestos removal and an additional 
$30 per each day the employee is engaged in asbestos removal 
and related duties. The additional pay for asbestos removal and 
related duties shall be payable entirely from county funds. 
Before service personnel may be used in the removal of 
asbestos material or related duties, they shall have completed 
a federal Environmental Protection Act-approved training 
program and be licensed. The employer shall provide all 
necessary protective equipment and maintain all records 
required by the Environmental Protection Act. 

(m) For the purpose of qualifying for additional pay as 
provided in §18A-5-8 of this code, an aide is considered to 
be exercising the authority of a supervisory aide and control 
over pupils if the aide is required to supervise, control, 
direct, monitor, escort, or render service to a child or 
children when not under the direct supervision of a certified 
professional person within the classroom, library, hallway, 
lunchroom, gymnasium, school building, school grounds, or 
wherever supervision is required. For purposes of this 
section, “under the direct supervision of a certified 
professional person” means that certified professional 
person is present, with and accompanying the aide. 

CHAPTER 190 
(S. B. 464 - By Senators Gaunch, Boso and Cline) 

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.] 

AN ACT to amend and reenact §5-5-2 of the Code of West Virginia, 
1931, as amended, relating to changing the statutory payment 
date for incremental salary increases due state employees. 

Be it enacted by the Legislature of West Virginia:
ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-2. Granting incremental salary increases based on years of service.

(a) Every eligible employee with three or more years of service shall receive an annual salary increase equal to $60 times the employee’s years of service. In each fiscal year and on or before July 31, each eligible employee shall receive an annual increment increase of $60 for that fiscal year.

(b) Every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on July 1, in any fiscal year is entitled to the annual salary increase equal to $60 times the employee’s years of service, where he or she has not in a previous fiscal year received the benefit of an increment computation. Thereafter, the employee shall receive a single annual increment increase of $60 for each subsequent fiscal year.

(c) These incremental increases are in addition to any across-the-board, cost-of-living, or percentage salary increases which may be granted in any fiscal year by the Legislature.

(d) This section shall not be construed to prohibit other pay increases based on merit, seniority, promotion, or other reason, if funds are available for the other pay increases: Provided, That the executive head of each spending unit shall first grant the mandated increase in compensation in this section to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion, or other reason.
CHAPTER 191

(S. B. 635 - By Senators Arvon, Boso, Drennan, Facemire, Ferns, Gaunch, Palumbo, Prezioso, Stollings, Sypolt, Takubo and Blair)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §5-5-4 of the Code of West Virginia, 1931, as amended, relating to a 2019 across-the-board salary adjustment for employees of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of Health and Human Resources salary adjustment.

1 The Legislature hereby directs that an across-the-board salary adjustment be provided for employees of the various bureaus and offices of the Department of Health and Human Resources. This salary adjustment shall be provided from the funding appropriated to the department in the fiscal year 2019 and may not be construed to require additional appropriations from the Legislature. This adjustment is separate from and in addition to any other salary adjustment approved during the 2018 regular session of the Legislature relative to the 2019 budget. In the event any provision of this section conflicts with any rule, policy, or provision of this code, the provisions of this section control. In determining the salary adjustments, the department may give additional consideration to specific job classifications including, but not limited, to child protective services, as
may be determined relevant by the secretary. Due to the limits of funding, the results of the salary adjustments shall not be subject to the provisions of §6C-2-1 et seq. of this code. It is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

CHAPTER 192

(Com. Sub. for H. B. 4142 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-5-4b, relating to providing certain employees of the Division of Corrections, Division of Juvenile Services, and West Virginia Regional Jail and Correctional Facility Authority increases in annual pay: providing legislative findings; providing funding sources; providing that pay rates and employment requirements shall not be subject to procedures for state employees’ grievances; providing for primacy of section; limiting private causes of action; and, providing that if employee will make more than the maximum allowable by the Division of Personnel for the pay grade, this salary increase shall still take effect, and that employee shall make more than the pay grade maximum.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4b. Division of Corrections, Division of Juvenile Services, and Regional Jail Authority pay equity salary adjustment.
(a) The Legislature hereby finds that the Division of Corrections, Division of Juvenile Services and the West Virginia Regional Jail and Correctional Facility Authority have extreme difficulty with recruiting and retaining employees of all types.

(b) The Legislature hereby directs that a pay equity salary adjustment and increase be provided to all employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority, regardless of where the employee reports to work. This salary adjustment shall be for a total of $6,000 apportioned over a three-year period as follows:

(1) On July 1, 2018, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000;

(2) On July 1, 2019, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000; and

(3) On July 1, 2020, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000.

(c) Funding for the pay rates for employees of the Division of Corrections and Division of Juvenile Services shall be provided from the general revenue appropriations to the Division of Corrections and Division of Juvenile Services, respectively.

(d) The salary adjustment for employees of the West Virginia Regional Jail Authority shall be funded from the special revenue fund established in §31-20-10 of this code, and shall not require additional general revenue appropriations from the Legislature.
(e) In the event any provision of this section conflicts with any rule, policy, or provision of this code, this section shall control. Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of §6C-2-1 et seq. of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

(f) If, following this pay raise, the employee will make more than the maximum allowable by the Division of Personnel for the pay grade, this salary increase shall still take effect, and that employee shall make more than the pay grade maximum.

CHAPTER 193

(Com. Sub. for H. B. 4145 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed March 6, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 6, 2018.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended as contained in Enrolled Committee Substitute for Senate Bill 267, Regular Session, 2018; and to amend and reenact §18A-4-2 and §18A-4-8a of said code as contained in Enrolled Committee Substitute for Senate Bill 267, Regular Session, 2018, all relating to increasing compensation for certain public employees; increasing the annual salaries of members of the West Virginia State Police; increasing the minimum salaries payable to public school teachers and professional personnel
during the contract year; and increasing the minimum monthly pay for public school service personnel.

*NOTE: This section was also amended by S. B. 267 (Chapter 189) which passed prior to this act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

*§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VIII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on July 1, 2018, members shall receive annual salaries payable at least twice per month as follows:
ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Cadet During Training ............................ $ 36,154
Cadet Trooper After Training .................. 43,414
Trooper Second Year ............................... 44,426
Trooper Third Year ................................. 44,809
Senior Trooper ...................................... 45,208
Trooper First Class ................................. 45,814
Corporal ............................................... 46,420
Sergeant ................................................ 50,721
First Sergeant ....................................... 52,872
Second Lieutenant ................................. 55,022
First Lieutenant .................................... 57,173
Captain ............................................... 59,324
Major .................................................. 61,474
Lieutenant Colonel ................................. 63,625

ADMINISTRATION SUPPORT SPECIALIST
CLASSIFICATION

I ............................................................. 44,426
II .......................................................... 45,208
III ......................................................... 45,814
IV ........................................................ 46,420
<table>
<thead>
<tr>
<th>Year</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>44,426 - 57,173</td>
</tr>
</tbody>
</table>

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in §15-2-5(e) of this code and supplemental pay as provided in §15-2-5(g) of this code.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in §15-2-5(d) of this code for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the
member shall receive a salary increase of $500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 et seq. of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the
West Virginia State Police’s payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members’ participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be
deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

*§18A-4-2. State minimum salaries for teachers.

(a) It is the goal of the Legislature to increase the state minimum salary for teachers with zero years of experience and an A. B. degree, including the equity supplement, to at least $43,000 by fiscal year 2019.

(b) For school year 2018–2019, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

STATE MINIMUM SALARY SCHEDULE

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<td>38,703</td>
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<td>38,219</td>
<td>38,980</td>
<td>39,740</td>
<td>40,501</td>
</tr>
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<td>33,432</td>
<td>36,209</td>
<td>36,970</td>
<td>38,737</td>
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</tr>
<tr>
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<td>37,246</td>
<td>38,007</td>
<td>39,774</td>
<td>40,535</td>
<td>41,296</td>
<td>42,057</td>
</tr>
<tr>
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<td>34,417</td>
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<td>38,526</td>
<td>40,294</td>
<td>41,055</td>
<td>41,816</td>
<td>42,576</td>
</tr>
</tbody>
</table>

*NOTE: This section was also amended by S. B. 267 (Chapter 189) which passed prior to this act.
12 (c) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.
(d) To meet the objective of salary equity among the counties as set forth in §18A-4-5 of this code, each teacher shall be paid an equity supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For “4th Class” at zero years of experience, $1,781. An additional $38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For “3rd Class” at zero years of experience, $1,796. An additional $67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For “2nd Class” at zero years of experience, $1,877. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For “A. B.” at zero years of experience, $2,360. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For “A. B. + 15” at zero years of experience, $2,452. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For “M. A.” at zero years of experience, $2,644. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For “M. A. + 15” at zero years of experience, $2,740. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For “M. A. + 30” at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For “M. A. + 45” at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience; and
(10) For “Doctorate” at zero years of experience, $2,927. An additional $69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

*§18A-4-8a. Service personnel minimum monthly salaries.*

(a) The minimum monthly pay for each service employee shall be as follows:

(1) For school year 2018–2019, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

---

**STATE MINIMUM SALARY SCHEDULE**

<table>
<thead>
<tr>
<th>Years Exp.</th>
<th>PAY GRADE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
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</tr>
<tr>
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</tr>
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<td>1,835</td>
</tr>
<tr>
<td>3</td>
<td>1,867</td>
</tr>
<tr>
<td>4</td>
<td>1,900</td>
</tr>
<tr>
<td>5</td>
<td>1,933</td>
</tr>
</tbody>
</table>

*NOTE: This section was also amended by S. B. 267 (Chapter 189) which passed prior to this act.*
|  6 | 1,965 | 1,987 | 2,030 | 2,082 | 2,135 | 2,198 | 2,230 | 2,230 | 2,304 |
|  7 | 1,999 | 2,019 | 2,062 | 2,114 | 2,167 | 2,231 | 2,262 | 2,337 |
|  8 | 2,032 | 2,052 | 2,095 | 2,147 | 2,200 | 2,263 | 2,295 | 2,369 |
|  9 | 2,064 | 2,085 | 2,128 | 2,181 | 2,233 | 2,296 | 2,327 | 2,402 |
| 10 | 2,097 | 2,118 | 2,160 | 2,213 | 2,265 | 2,330 | 2,361 | 2,435 |
| 11 | 2,130 | 2,151 | 2,193 | 2,246 | 2,298 | 2,362 | 2,394 | 2,467 |
| 12 | 2,162 | 2,184 | 2,225 | 2,279 | 2,332 | 2,395 | 2,426 | 2,500 |
| 13 | 2,195 | 2,216 | 2,258 | 2,311 | 2,364 | 2,427 | 2,459 | 2,533 |
| 14 | 2,228 | 2,249 | 2,291 | 2,344 | 2,397 | 2,460 | 2,492 | 2,565 |
| 15 | 2,260 | 2,282 | 2,323 | 2,376 | 2,429 | 2,493 | 2,524 | 2,598 |
| 16 | 2,293 | 2,314 | 2,356 | 2,409 | 2,462 | 2,525 | 2,557 | 2,631 |
| 17 | 2,325 | 2,347 | 2,390 | 2,442 | 2,495 | 2,558 | 2,590 | 2,664 |
| 18 | 2,358 | 2,380 | 2,422 | 2,474 | 2,527 | 2,591 | 2,622 | 2,697 |
| 19 | 2,392 | 2,412 | 2,455 | 2,507 | 2,560 | 2,623 | 2,655 | 2,729 |
| 20 | 2,424 | 2,445 | 2,488 | 2,541 | 2,593 | 2,656 | 2,688 | 2,763 |
| 21 | 2,457 | 2,477 | 2,520 | 2,573 | 2,625 | 2,689 | 2,720 | 2,797 |
| 22 | 2,490 | 2,511 | 2,553 | 2,606 | 2,658 | 2,722 | 2,754 | 2,829 |
| 23 | 2,522 | 2,544 | 2,586 | 2,639 | 2,692 | 2,756 | 2,788 | 2,863 |
| 24 | 2,555 | 2,576 | 2,618 | 2,671 | 2,724 | 2,790 | 2,821 | 2,897 |
| 25 | 2,588 | 2,609 | 2,651 | 2,704 | 2,758 | 2,822 | 2,855 | 2,929 |
| 26 | 2,620 | 2,642 | 2,683 | 2,738 | 2,792 | 2,856 | 2,887 | 2,963 |
| 27 | 2,653 | 2,674 | 2,716 | 2,770 | 2,824 | 2,888 | 2,921 | 2,996 |
| 28 | 2,686 | 2,707 | 2,750 | 2,804 | 2,858 | 2,922 | 2,955 | 3,030 |
| 29 | 2,718 | 2,741 | 2,783 | 2,836 | 2,891 | 2,956 | 2,987 | 3,064 |
| 30 | 2,752 | 2,773 | 2,817 | 2,870 | 2,924 | 2,988 | 3,021 | 3,097 |
| 31 | 2,785 | 2,807 | 2,851 | 2,904 | 2,958 | 3,022 | 3,055 | 3,130 |
| 32 | 2,819 | 2,840 | 2,883 | 2,937 | 2,990 | 3,056 | 3,087 | 3,164 |
| 33 | 2,853 | 2,873 | 2,917 | 2,971 | 3,024 | 3,088 | 3,121 | 3,197 |
| 34 | 2,885 | 2,907 | 2,951 | 3,005 | 3,058 | 3,122 | 3,155 | 3,230 |
| 35 | 2,919 | 2,941 | 2,983 | 3,037 | 3,090 | 3,156 | 3,188 | 3,264 |
| 36 | 2,953 | 2,974 | 3,017 | 3,071 | 3,125 | 3,189 | 3,222 | 3,296 |
(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>PAY GRADE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountant I</td>
<td>D</td>
</tr>
<tr>
<td>Accountant II</td>
<td>E</td>
</tr>
<tr>
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<td>F</td>
</tr>
<tr>
<td>Accounts Payable Supervisor</td>
<td>G</td>
</tr>
<tr>
<td>Aide I</td>
<td>A</td>
</tr>
<tr>
<td>Aide II</td>
<td>B</td>
</tr>
<tr>
<td>Aide III</td>
<td>C</td>
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<td>D</td>
</tr>
<tr>
<td>Audiovisual Technician</td>
<td>C</td>
</tr>
<tr>
<td>Auditor</td>
<td>G</td>
</tr>
<tr>
<td>Autism Mentor</td>
<td>F</td>
</tr>
<tr>
<td>Braille Specialist</td>
<td>E</td>
</tr>
<tr>
<td>Bus Operator</td>
<td>D</td>
</tr>
<tr>
<td>Buyer</td>
<td>F</td>
</tr>
<tr>
<td>Cabinetmaker</td>
<td>G</td>
</tr>
<tr>
<td>34</td>
<td>Cafeteria Manager ...................................................... D</td>
</tr>
<tr>
<td>35</td>
<td>Carpenter I ............................................................ E</td>
</tr>
<tr>
<td>36</td>
<td>Carpenter II .......................................................... F</td>
</tr>
<tr>
<td>37</td>
<td>Chief Mechanic ....................................................... G</td>
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56  Electrician I ................................................................. F
57  Electrician II .............................................................. G
58  Electronic Technician I ................................................. F
59  Electronic Technician II ............................................... G
60  Executive Secretary .................................................... G
61  Food Services Supervisor .............................................. G
62  Foreman ................................................................. G
63  General Maintenance ................................................... C
64  Glazier ..................................................................... D
65  Graphic Artist .............................................................. D
66  Groundsman ............................................................... B
67  Handyman ................................................................. B
68  Heating and Air Conditioning Mechanic I ....................... E
69  Heating and Air Conditioning Mechanic II ...................... G
70  Heavy Equipment Operator .......................................... E
71  Inventory Supervisor ................................................... D
72  Key Punch Operator ..................................................... B
73  Licensed Practical Nurse .............................................. F
74  Locksmith ................................................................. G
75  Lubrication Man ........................................................ C
76  Machinist ................................................................. F
77  Mail Clerk ................................................................. D
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<td>Roofing/Sheet Metal Mechanic</td>
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<tr>
<td>99</td>
<td>Supervisor of Maintenance</td>
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</table>
(b) An additional $12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional $11 per month also is added to the minimum monthly pay of each service person for each of the following:

1. A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

2. A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

3. A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

4. A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

5. A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional $40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate’s degree;

(2) A service person who holds a bachelor’s degree;

(3) A service person who holds a master’s degree;

(4) A service person who holds a doctorate degree.

(e) An additional $11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor’s degree plus 15 college hours;

(2) A service person who holds a master’s degree plus 15 college hours;
(3) A service person who holds a master’s degree plus 30 college hours;

(4) A service person who holds a master’s degree plus 45 college hours; and

(5) A service person who holds a master’s degree plus 60 college hours.

(f) To meet the objective of salary equity among the counties, each service person is paid an equity supplement, as set forth in §18A-4-5 of this code, of $164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person’s daily shift of work is performed between the hours of 6:00 p. m. and 5:00 a. m. the following day, the employee is paid no less than an additional $10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person’s usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee’s written consent and the person’s required daily
work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one seventh of the person’s daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: Provided, however, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional $3 per hour or no less than $5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee’s regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional
$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, “under the direct supervision of a certified professional person” means that certified professional person is present, with and accompanying the aide.
adding thereto a new section, designated §16-46-7, all relating to drug control; requiring reports to the Office of Drug Control Policy; allowing the Office of Drug Control Policy to establish a pilot program for community response to persons who have experienced a recent overdose; requiring governmental agencies to require first responders to carry Naloxone subject to certain conditions; requiring governmental agencies to require first responders to be trained in Naloxone use; providing that Naloxone is subject to funding and availability; and providing for a statewide standing order for Naloxone by the state health officer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-4. Entities required to report; required information.

(a) To fulfill the purposes of this article, the following information shall be reported to the Office of Drug Control Policy:

(1) An emergency medical or law-enforcement response to a suspected, reported, or confirmed overdose, or a response in which an overdose is identified by the responders;

(2) Medical treatment for an overdose;

(3) The dispensation or provision of an opioid antagonist; and

(4) Death attributed to overdose or “drug poisoning”.

(b) The following entities shall be required to report information contained in §16-5T-4(a) of this code:

(1) Pharmacies operating in the state;

(2) Health care providers;

(3) Medical examiners;
(4) Law-enforcement agencies, including prosecuting attorneys, state, county, and local police departments;

(5) Emergency response providers; and

(6) Hospital emergency rooms and departments.

§16-5T-6. Community Overdose Response Demonstration Pilot Project.

(a) The Director of the Office of Drug Control Policy shall establish a Community Overdose Response Demonstration Pilot Project, to be continued for a period of four years, to develop model government programs to promote public health and general welfare through a comprehensive community-based response to drug overdoses in communities across West Virginia.

(b) The purpose of the demonstration pilot project is the development of community programs that will focus and use existing resources of government agencies to create outreach programs to educate concerned family and community members, including first responders, to recognize an opioid overdose, and to immediately respond with life-saving measures and quick response teams comprised of law enforcement, emergency medical personnel, and a trained opiate case manager to conduct an in-home visit within one week of an overdose.

(c) The objective of the demonstration pilot project is to improve public health by addressing drug overdoses through a comprehensive community development plan. The plan should serve as a model to improve public health and education through a comprehensive community-based response to drug overdoses across the state.

(d) Communities that experience a high frequency of drug overdoses, compared with national averages as determined by the Office of Drug Control Policy, are eligible for participation in the demonstration pilot project.
(e) The demonstration pilot project shall be developed and administered by the Office of Drug Control Policy to encourage state and local agencies and community groups to work together and coordinate government and community responses to drug overdoses, and identify new and existing funds, personnel, and other existing resources available for the demonstration pilot project. Demonstration projects may include:

(1) Outreach programs to educate concerned family and community members, including first responders, to recognize an opioid overdose and to immediately respond with life-saving measures. This outreach may include basic information, training in the proper and safe administration of Naloxone to reverse drug overdoses, and the distribution of Naloxone kits; and

(2) Quick response teams comprised of law enforcement, emergency medical personnel, and a case manager trained in substance use disorder to conduct an in-home visit within one week of an overdose. The quick response teams would work cooperatively to triage and assess overdose survivors and provide linkage to treatment and services for rehabilitation with the goal of reducing repeated overdoses.

(f) The demonstration project may receive funding and other committed resources from federal, state, or local government and community groups.

(g) A community desiring to participate in the demonstration project shall submit a plan to the director that provides for the following elements:

(1) Community participation;

(2) Development of a community action plan with measurable, achievable, realistic, time-phased objectives;

(3) Implementation of the community action plan; and
(4) Evaluation of results.

(h) By majority vote, the Governor’s Advisory Council on Substance Use Disorder Policy created pursuant to Executive Order 10-17 may select one or more communities from those that submit plans for participation in the demonstration pilot project.

(i) Commencing December 1, 2018, and each year thereafter, each participating community shall give a progress report to the director and commencing January 1, 2019, and each year thereafter, the director shall give a summary report of all the participating communities to the Legislative Oversight Commission on Health and Human Resources Accountability as established in §16-29E-1 et seq. of this code, on progress made by the pilot demonstration project, including suggested legislation, necessary changes to the demonstration pilot project, and suggested expansion of the demonstration project.

(j) This section is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the state, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(k) The demonstration project terminates on July 1, 2022.

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS.

§16-46-4. Possession and administration of an opioid antagonist by initial responders; limited liability.

(a) Local and state governmental agencies that employ initial responders must provide opioid antagonist rescue kits to their initial responders, require initial responders to successfully complete the training required by §16-46-6(b) of this code, and require the initial responders to carry the opioid antagonist rescue kits in accordance with agency procedures so as to optimize the initial responders’ capacity
to timely assist in the prevention of opioid overdoses: Provided, That a local or state governmental agency has designated sufficient funding or supplies of opioid antagonist rescue kits.

(b) In the absence of gross negligence or willful misconduct, nothing in this section shall be construed to impose civil or criminal liability on a local or state governmental agency or an initial responder acting in good faith in the administration or provision of an opioid antagonist in cases where an individual appears to be experiencing an opioid overdose.

(c) As used in this section, an “opioid antagonist rescue kit” means a kit containing:

1. Two doses of an opioid antagonist in either a generic form or in a form approved by the United States Federal Food and Drug Administration; and

2. Overdose education materials that conform to Office of Emergency Medical Services or federal Substance Abuse and Mental Health Services Administration guidelines for opioid overdose education that explain the signs and causes of an opioid overdose and instruct when and how to administer in accordance with medical best practices:

   (A) Life-saving rescue techniques; and

   (B) An opioid antagonist.

§16-46-7. Statewide standing orders for opioid antagonist.

(a) The state health officer may prescribe on a statewide basis an opioid antagonist by one or more standing orders to eligible recipients.

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

1. The opioid antagonist formulations and means of administration that are approved for dispensing;
7 (2) The eligible recipients to whom the opioid antagonist may be dispensed;

9 (3) Any training that is required for an eligible recipient to whom the opioid antagonist is dispensed;

11 (4) The circumstances under which an eligible recipient may distribute or administer the opioid antagonist; and

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

CHAPTER 195

(Com. Sub. for S. B. 359 - By Senators Trump, Unger and Weld)

[Passed March 7, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating generally to mental hygiene proceedings; eliminating requirement that new mental hygiene commissioners undergo a minimum of three days training in mental hygiene areas; removing requirement that training program include training in manifestations of mental illness and addiction; and authorizing the Supreme Court to establish curricula for mental hygiene commissioners and those magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.
§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

(a) Appointment of mental hygiene commissioners. —

The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in §6-1-1 et seq. of this code.

All persons newly appointed to serve as mental hygiene commissioners shall attend and complete an orientation course, within one year of their appointment, consisting of training provided annually by the Supreme Court of Appeals. In addition, existing mental hygiene commissioners and any magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the Supreme Court of Appeals. Persons attending such courses outside the county of their residence shall be reimbursed out of the budget of the Supreme Court - General Judicial for reasonable expenses incurred. The Supreme Court of Appeals shall establish curricula and rules for such courses, including rules providing for the reimbursement of reasonable expenses as authorized herein.

(b) Duties of mental hygiene commissioners. —

(1) Mental hygiene commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness
under oath; may elicit testimony from applicants, respondents, and witnesses regarding factual issues raised in the petition; and may make findings of fact on evidence and may make conclusions of law, but such findings and conclusions shall not be binding on the circuit court. All mental hygiene commissioners shall be reasonably compensated at a uniform rate determined by the Supreme Court of Appeals. Mental hygiene commissioners shall submit all requests for compensation to the administrative director of the courts for payment. Mental hygiene commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by such chief judge. It shall be the duty of a mental hygiene commissioner to conduct orderly inquiries into the mental health of the individual sought to be committed concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks a foreign language and who may be subject to involuntary commitment to a mental health facility.

(2) A mental hygiene commissioner appointed by the circuit court of one county or multiple county circuits may serve in such capacity in a jurisdiction other than that of his or her original appointment if such be agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters during noncourt hours or on nonjudicial days.

(c) *Duties of prosecuting attorney.* — It shall be the duty of the prosecuting attorney or one of his or her assistants to
represent the applicants in all final commitment proceedings filed pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to the provisions of this article if he or she deems it to be in the public interest.

(d) Duties of sheriff. — Upon written order of the circuit court, mental hygiene commissioner, or magistrate in the county where the individual formally accused of being mentally ill or addicted is a resident or is found, the sheriff of that county shall take said individual into custody and transport him or her to and from the place of hearing and the mental health facility. The sheriff shall also maintain custody and control of the accused individual during the period of time in which the individual is waiting for the involuntary commitment hearing to be convened and while such hearing is being conducted: Provided, That an individual who is a resident of a state other than West Virginia shall, upon a finding of probable cause, be transferred to his or her state of residence for treatment pursuant to §27-5-4(p) of this code: Provided, however, That where an individual is a resident of West Virginia but not a resident of the county in which he or she is found and there is a finding of probable cause, the county in which the hearing is held may seek reimbursement from the county of residence for reasonable costs incurred by the county attendant to the mental hygiene proceeding. Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one or more other counties, with the concurrence of their respective circuit courts and county commissions, whereby transportation and security responsibilities for hearings held pursuant to the provisions of this article during noncourt hours or on nonjudicial days may be shared in order to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment.

(e) Duty of sheriff upon presentment to mental health care facility. — When a person is brought to a mental health
care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed, or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) Duties of Supreme Court of Appeals. — The Supreme Court of Appeals shall provide uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

CHAPTER 196

(Com. Sub. for S. B. 408 - By Senators Takubo, Maroney, Stollings and Plymale)

[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to repeal §16-5D-16 and §16-5D-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5C-3 of said code; and to amend and reenact §16-5D-2, §16-5D-3, §16-5D-4, §16-5D-5, §16-5D-6, §16-5D-7, §16-5D-8, §16-5D-9, §16-5D-10, §16-5D-11, §16-5D-12, §16-5D-13, and §16-5D-15 of said code, all relating to the licensure of nursing homes and assisted living residences; requiring real-time online publication of certain information related to nursing homes and assisted living residences by Secretary of Department of Health and Human Resources in lieu of annual report; identifying information to be published online; defining terms; updating definitions; clarifying rule requirements; identifying additional legislative rules to be
proposed by Secretary of Department of Health and Human Resources; allowing physical and electronic delivery methods for certain reports; repealing outdated sections of code; eliminating duplicative provisions of code; clarifying enforcement action and due process procedures; setting forth actions to be taken if license is suspended, denied, limited, or revoked; requiring reporting by assisted living residence administrator to Secretary of Board of Pharmacy; barring certain individuals from application to operate another assisted living facility; setting maximum period of suspension on license suspension for assisted living facility; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. NURSING HOMES.

§16-5C-3. Powers, duties, and rights of secretary.

1 In the administration of this article, the secretary shall have the following powers, duties, and rights:

2 (a) To enforce rules and standards promulgated hereunder for nursing homes;

3 (b) To exercise as sole authority all powers relating to the issuance, suspension, and revocation of licenses of nursing homes;

4 (c) To enforce rules promulgated hereunder governing the qualification of applicants for nursing home licenses, including, but not limited to, educational requirements, financial requirements, personal, and ethical requirements;

5 (d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of such federal funds;
(e) To receive and disburse for authorized purposes any moneys appropriated to the department by the Legislature;

(f) To receive and disburse for purposes authorized by this article any funds that may come to the department by gift, grant, donation, bequest, or devise, according to the terms thereof, as well as funds derived from the department’s operation, or otherwise;

(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the secretary’s functions and duties; and all such contracts, agreements, and instruments will be executed by the secretary;

(h) To appoint officers, agents, employees, and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for nursing homes for clinical, administrative, management, and operational personnel;

(j) To undertake survey, research and planning projects, and programs relating to administration and operation of nursing homes and to the health, care, treatment, and service in general of such homes;

(k) To assess civil penalties for violations of facility standards, in accordance with §16-5C-10 of this code;

(l) To inspect any nursing home and any records maintained therein that are necessary to determine compliance with licensure laws or Medicare or Medicaid certification, subject to the provisions of §16-5C-9 and §16-5C-10 of this code;

(m) To establish and implement procedures, including informal conferences, investigations, and hearings, subject to applicable provisions of §29A-3-1 et seq. of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder;
(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice to all persons affected thereby, the secretary may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of rules issued hereunder. Such action may be taken by the secretary without the sanction of the prosecuting attorney of the county in which proceedings are instituted if the officer fails or refuses to discharge his or her duty. The circuit court of the county in which the conduct has occurred or, if emergency circumstances require, the Circuit Court of Kanawha County shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the secretary or any person acting under the secretary’s direction be required to give security for costs;

(p) To delegate authority to the secretary’s employees and agents to perform all functions of the secretary;

(q) To make available to the Governor, the Legislature, and the public at all times online access through the Office of Health Facility Licensure and Certification website the following information. The online information will describe the licensing and investigatory activities of the department during the year. The online information will include a list of all nursing homes in the state, whether such homes are proprietary or nonproprietary; the name of the administrator or administrators; the total number of beds; the legal name of the facility; state identification number; health investigations information and reports; life safety investigations information and reports; and whether or not
those nursing homes listed accept Medicare and Medicaid residents; and

(r) To establish a formal process for licensed facilities to file complaints about the inspection process or inspectors.

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

§16-5D-2. Definitions.

(a) As used in this article, unless a different meaning appears from the context:

1 “Assisted living residence” means any living facility, residence, or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under §16-5B-1 of this code; or state institutions, as defined under §25-1-3 or §27-1-6 of this code; or residential care homes operated by the federal government or the state; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 et seq. of this code;
(2) “Deficiency” means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(3) “Department” means the state Department of Health and Human Resources;

(4) “Director” means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(5) “Division” means the Office of Health Facility Licensure and Certification within the Office of the Inspector General of the state Department of Health and Human Resources;

(6) “Limited and intermittent nursing care” means direct hands-on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode: Provided, That such time limitations shall not apply to an individual who, after having established a residence in an assisted living residence, subsequently qualifies for and receives services coordinated by a licensed hospice and such time limitations shall not apply to home health services provided by a Medicare-certified home health agency. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the secretary for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code;

(7) “Nursing care” means those procedures commonly employed in providing for the physical, emotional, and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedures contributing to rehabilitation, and administration of medication by any method which involves
a level of complexity and skill in administration not possessed by the untrained person;

(8) “Person” means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state;

(9) “Personal assistance” means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding, or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(10) “Resident” means an individual living in an assisted living residence for the purpose of receiving personal assistance or limited and intermittent nursing services;

(11) “Secretary” means the secretary of the state Department of Health and Human Resources or his or her designee; and

(12) “Substantial compliance” means a level of compliance with the rules such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

(b) The secretary may define in rules any term used herein which is not expressly defined.


In the administration of this article, the secretary has the following powers, duties, and rights:

(a) To enforce rules and standards for assisted living residences which are adopted, promulgated, amended, or modified by the secretary;

(b) To exercise as sole authority all powers relating to the issuance, suspension, and revocation of licenses of assisted living residences;
(c) To enforce rules adopted, promulgated, amended, or modified by the secretary governing the qualification of applicants for assisted living residences, including, but not limited to, educational requirements, financial requirements, personal, and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest, or devise, according to the terms thereof, as well as funds derived from the division’s operation or otherwise;

(g) To make contracts and to execute all instruments necessary or convenient in carrying out the secretary’s functions and duties; and all such contracts, agreements, and instruments will be executed by the secretary;

(h) To appoint officers, agents, employees, and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for assisted living residences’ administrative, management, and operational personnel;

(j) To undertake survey, research and planning projects, and programs relating to administration and operation of assisted living residences and to the health, care, treatment, and service in general of residents of assisted living residences;

(k) To assess civil penalties for violations of assisted living residence standards in accordance with §16-5D-10 of this code;
(l) To inspect any assisted living residence and any records maintained therein subject to the provisions of §16-5D-9 and §16-5D-10 of this code;

(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of §29A-3-1 et seq. of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder by the secretary;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice to all persons affected thereby, the secretary may apply to the circuit court of the county in which the hearing is to be held or to the Circuit Court of Kanawha County for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person for the violation of the provisions of this article or of rules issued hereunder by the secretary. Such action may be taken by the secretary without the sanction of the prosecuting attorney of the county in which proceedings are instituted if the prosecuting attorney fails or refuses to discharge his or her duty. The Circuit Court of Kanawha County or the circuit court of the county in which the conduct has occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the secretary or any person acting under the secretary’s direction be required to give security for costs;

(p) To delegate authority to the secretary’s employees and agents to perform all functions of the secretary except the making of final decisions in adjudications; and

(q) To make available to the Governor, the Legislature and the public at all times online access through the Office
of Health Facility Licensure and Certification website the following information. The online information will describe the assisted living residence licensing and investigatory activities of the division. The online information will include a list of all assisted living residences in the state and such of the following information as the secretary determines to apply: Whether the assisted living residences are proprietary or nonproprietary; the classification of each assisted living residence; the name of the administrator or administrators; the total number of beds; license type; license number; license expiration date; health investigations information and reports; life safety investigations information and reports; and whether or not those assisted living residences listed accept Medicare and Medicaid residents.

§16-5D-4. Administrative and inspection staff.

The secretary may, as he or she determines necessary, employ administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division will be members of the state civil service system. Inspectors and other employees as may be duly designated by the secretary will act as the secretary’s representatives and, under the direction of the secretary, will enforce the provisions of this article and all duly promulgated rules of the secretary and, in the discharge of official duties, will have the right of entry into any place maintained as an assisted living residence at any time.

§16-5D-5. Rules; minimum standards for assisted living residences.

(a) The secretary will propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to carry out the purposes and intent of this article and to enable the secretary to exercise the powers and perform the duties conferred upon the secretary by this article.
(b) The secretary will propose rules establishing minimum standards of operation of assisted living residences, including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to assisted living residences by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy;

(B) A statement of the rights and responsibilities of residents;

(C) The process to be followed by applicants seeking a license;

(D) The clinical, medical, resident, and business records to be kept by the assisted living residence;

(E) The procedures for inspections and for the review of utilization and quality of resident care; and

(F) The procedures for informal dispute resolution and administrative due process and when such remedies are available.

(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies, and support personnel, according to the size and classification of the assisted living residence;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;
(7) Maintenance of health records;

(8) Social and recreational activities to be made available;

(9) Physical facilities;

(10) Requirements related to provision of limited and intermittent nursing;

(11) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(12) Such other categories as the secretary determines to be appropriate to ensure resident’s health, safety, and welfare.

(c) The secretary will include in rules detailed standards for each of the categories of standards established pursuant to §16-5D-5(b) and §16-5D-5(d) of this code and will classify such standards as follows:

(1) Class I standards are standards the violation of which, as the secretary determines, would present either an imminent danger to the health, safety, or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which the secretary determines have a direct or immediate relationship to the health, safety, or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which the secretary determines have an indirect or a potential impact on the health, safety, or welfare of any resident.

(d) An assisted living residence shall attain substantial compliance with standards established pursuant to this
section and such other requirements for a license as may be
established by rule under this article.

§16-5D-6. License required; application; fees; duration; renewal.

(a) There shall be one assisted living residence license
for each assisted living residence. No person may establish,
operate, maintain, offer, or advertise an assisted living
residence within this state unless and until he or she obtains
a valid license therefor as provided in this article, which
license remains unsuspended, unrevoked, and unexpired.
No public official or employee may place any person in, or
recommend that any person be placed in, or directly or
indirectly cause any person to be placed in any assisted
living residence, as defined in §16-5D-2 of this code, which
is being operated without a valid license from the secretary.
The licensee shall be responsible for, and shall have
complete control of, the operation and premises of the
assisted living residence and the personal assistance and
supervision provided to the residents: Provided, That the
secretary may review any leases or any contracts,
subcontracts, agreements, or arrangements for the provision
of on-site services to the residents of an assisted living
residence to ensure the proper care, safety, and welfare of
current or potential residents. Nothing in this article shall be
construed to prevent or prohibit the ability of a resident of
an assisted living residence to contract or arrange for, and
to receive, privately paid nursing care or personal assistance
in addition to those services provided by the licensee,
subject to the consent and cooperation of the licensee and
consistent with the duties and responsibilities imposed by
this section.

(b) Nothing in this article shall be construed to require
the licensing of landlords or property owners who are not
involved in the provision of supervision, personal
assistance, limited and intermittent nursing care, or other
on-site professional services for the residents of an assisted
living residence or in the advertising, recruitment of
residents, transportation of residents, or other substantial
and ongoing services for the operation or maintenance of
the assisted living residence.

(c) The procedure for obtaining a license shall be as
follows:

The applicant shall submit an application to the
secretary on a form to be prescribed by the secretary,
containing such information as may be necessary to show
that the applicant is in compliance with the standards for
assisted living residences as established by this article and
the rules lawfully promulgated by the secretary hereunder.
The application and any exhibits thereto shall provide the
following information:

(A) The name and address of the applicant;

(B) The name, address, and principal occupation:

(i) Of each person who, as a stockholder or otherwise,
has a proprietary interest of 10 percent or more in the
applicant;

(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of an applicant
which is a trust; and

(iv) Where a corporation has a proprietary interest of 25
percent or more in an applicant, the name, address, and
principal occupation of each officer and director of the
corporation;

(C) The name and address of the owner of the premises
of the assisted living residence or proposed assisted living
residence, if he or she is a different person from the
applicant, and in such case, the name and address:

(i) Of each person who, as a stockholder or otherwise,
has a proprietary interest of 10 percent or more in the owner;
(ii) Of each officer and director of a corporate applicant;  
(iii) Of each trustee and beneficiary of the owner if it is  
a trust; and  
(iv) Where a corporation has a proprietary interest of 25  
percent or more in the owner, the name and address of each  
officer and director of the corporation;  
(D) Where the applicant is the lessee or the assignee of  
the assisted living residence or the premises of the proposed  
assisted living residence, a signed copy of the lease and any  
assignment thereof;  
(E) The name and address of the assisted living  
residence or the premises of the proposed assisted living  
residence;  
(F) The proposed bed quota of the assisted living  
residence and the proposed bed quota of each unit thereof;  
(G) An organizational plan for the assisted living  
residence indicating the number of persons employed or to  
be employed, the positions and duties of all employees;  
(H) The name and address of the individual who is to  
serve as administrator;  
(I) Such evidence of compliance with applicable laws  
and rules governing zoning, buildings, safety, fire  
prevention, and sanitation as the secretary may require; and  
(J) Such additional information as the secretary may  
require.  
(d) Upon receipt and review of an application for license  
made pursuant to §16-5D-6(a) of this code and inspection  
of the applicant assisted living residence pursuant to §16-  
5D-9 and §16-5D-10 of this code, the secretary will issue a  
license if he or she finds:
(1) That an individual applicant, and every partner, trustee, officer, secretary, and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of an assisted living residence by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years;

(2) That the assisted living residence is under the supervision of an administrator who is qualified by training and experience; or

(3) That the assisted living residence is in substantial compliance with standards established pursuant to §16-5D-5 of this code and such other requirements for a license as the secretary may establish by rule under this article.

(e) The secretary may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false or the applicant fails to report required information or for any other reason permitted by law or rules promulgated pursuant to this article.

(f) Any license granted by the secretary will state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Licenses will be issued for a period not to exceed one year for assisted living residences: Provided, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the department in conformance with the provisions of this article and the rules issued thereunder and prior to the expiration date of the license, shall continue in effect until: (1) One year following the expiration date of the license; or (2) the date of the revocation or suspension of the license pursuant to the provisions of this article; or (3) the date of issuance of a new license, whichever date first occurs. Each license will be
issued only for the premises and persons named in the application and is not transferable or assignable: Provided, however, That in the case of the transfer of ownership of an assisted living residence with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the secretary. Every license shall be posted in a conspicuous place in the assisted living residence for which it is issued so as to be accessible to and in plain view of all residents and visitors of the assisted living residence.

(g) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee and contingent upon evidence of compliance with the provisions of this article and rules promulgated by the secretary hereunder; the application shall be accompanied by:

(1) The information required in §16-5D-6(c)(A) through §16-5D-6(c)(C) of this code.

(2) A balance sheet of the assisted living residence as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation, and similar accounts;

(3) A statement of operations of the assisted living residence as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items, and other credits or charges; and

(4) A statement of any changes in the name, address, management, or ownership information on file with the secretary.

(h) In the case of an application for a renewal license, if all requirements of §16-5D-5 and §16-5D-6 of this code are not met, the secretary may in his or her discretion issue a provisional license, provided that care given in the assisted living residence is adequate for resident needs and the
assisted living residence has demonstrated improvement and evidences potential for substantial compliance within the term of the license: Provided, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any assisted living residence with uncorrected violations of any Class I standard, as defined in §16-5D-5(c) of this code.

(i) A nonrefundable application fee in the amount of $65 for an original assisted living residence license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial licensure for the preceding 10 facilities based on the size of the facility’s licensed bed capacity shall be borne by the applicant and shall be received by the secretary prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $6 per bed per year for assisted living residences except the annual rate per bed may be assessed for licenses issued for less than one year. The secretary may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license will be determined by the secretary. All license fees shall be due and payable to the secretary annually, and in the manner set forth in the rules promulgated by the secretary. The fee and application shall be submitted to the secretary who will retain both the application and fee pending final action on the application. All fees received by the secretary under the provisions of this article will be deposited in accordance with §16-1-13 of this code.

§16-5D-7. Cost disclosure; surety for residents’ funds.

(a) Each assisted living residence shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them. Residents are not liable for any cost not so disclosed.

(b) If the assisted living residence handles any money for residents within the assisted living residence, the
licensee or his or her authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the secretary will approve. The bond shall be upon condition that the licensee shall hold separately and in trust all residents’ funds deposited with the licensee, shall administer the funds on behalf of the resident in the manner directed by the depositor, shall render a true and complete account to the depositor and the secretary when requested, and at least quarterly to the resident, and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond in a sum to be fixed by the secretary based upon the magnitude of the operations of the applicant, but which sum may not be less than $2,500.

(c) Every person injured as a result of any improper or unlawful handling of the money of a resident of an assisted living residence may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the secretary determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any bond is impaired by any recovery against the bond, the secretary may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

(d) The provisions of §16-5D-7(b) of this code do not apply if the licensee handles less than $25 per resident and less than $500 for all residents in any month.

§16-5D-8. Investigation of complaints.

(a) The secretary will establish, by rule, procedures for prompt investigation of all complaints of alleged violations by assisted living residences of applicable requirements of state law or rules, except for such complaints that the
secretary determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures will include provisions for ensuring the confidentiality of the complainant and of any other person so named in the complaint and for promptly informing the complainant and the assisted living residence involved of the results of the investigation.

(b) If, after its investigation, the secretary determines that the complaint has merit, the secretary will take appropriate disciplinary action and will advise any injured party of the possibility of a civil remedy under this article.

(c) No assisted living residence may discharge or in any manner discriminate against any resident or employee for the reason that the resident or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any assisted living residence constitutes grounds for the suspension or revocation of the license of the assisted living residence as provided in §16-5D-11 and §16-5D-12 of this code. Any type of discriminatory treatment of a resident or employee by whom, or upon whose behalf, a complaint has been submitted to the secretary, or any proceeding instituted under this article, within 120 days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the assisted living residence in retaliation for the complaint or action.

§16-5D-9. Inspections.

(a) The secretary and any duly designated employee or agent thereof will have the right to enter upon and into the premises of any assisted living residence at any time for which a license has been issued, for which an application for license has been filed with the secretary, or which the secretary has reason to believe is being operated or maintained as an assisted living residence without a license. If entry is refused by the owner or person in charge of the
assisted living residence, the secretary will apply to the circuit court of the county in which the assisted living residence is located or the Circuit Court of Kanawha County for an administrative inspection warrant.

(b) The secretary, by the secretary’s authorized employees or agents, will conduct at least one inspection prior to issuance of a license pursuant to §16-5D-6 of this code and will conduct periodic unannounced inspections thereafter to determine compliance by the assisted living residence with applicable statutes and rules promulgated thereunder. All assisted living residences shall comply with rules of the State Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall make all fire, safety, and like inspections. The secretary may provide for such other inspections as the secretary may deem necessary to carry out the intent and purpose of this article. If after investigating a complaint the secretary determines that the complaint is substantiated and that an immediate and serious threat to a resident’s health or safety exists, the secretary may invoke any remedies available pursuant to §16-5D-11 and §16-5D-12 of this code. Any assisted living residence aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16-5D-12 of this code.

§16-5D-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16-5D-9 of this code will be in writing and will list all deficiencies in the assisted living residence’s compliance with the provisions of this article and the rules adopted by the secretary hereunder. The director will send a copy of the report to the assisted living residence by physical or electronic method with verifiable delivery, and will specify a time within which the assisted living residence shall submit a plan for correction of deficiencies, which plan will be approved, rejected, or modified by the secretary. The
inspectors will allow audio taping of the exit conference for licensure inspections with all costs directly associated with the taping to be paid by the assisted living residence, provided that an original tape is provided to inspectors at the end of taping.

(b) Upon an assisted living residence’s failure to submit a plan of correction which is approved by the secretary, or to correct any deficiency within the time specified in an approved plan of correction, the secretary may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to prohibit the secretary from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the secretary, the violation of the rule jeopardizes the health or safety of residents or where the violation of the rule is the second or subsequent violation occurring during a period of 12 full months.

(d) Civil penalties assessed against assisted living residences will be classified according to the nature of the violation as defined in §16-5D-5(c) of this code and rules promulgated thereunder by the secretary, as follows: For each violation of a Class I standard, a civil penalty of not less than $50 nor more than $500 will be imposed; for each violation of a Class II standard, a civil penalty of not less than $25 nor more than $50 will be imposed; for each violation of a Class III standard, a civil penalty of not less than $10 nor more than $25 will be imposed. Each day a violation continues, after the date of citation, shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(e) The secretary will assess a civil penalty not to exceed $2,000 against any individual who notifies, or causes to be notified, an assisted living residence of the time or date on
which an inspection is scheduled to be conducted under this article.

(f) If the secretary assesses a penalty under this section, the secretary will cause delivery of notice of the penalty by personal service or by certified mail. The notice will state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the secretary assessed the penalty and selected the amount of the penalty.

(g) The secretary will, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16-5D-12 of this code within 30 days of receipt of notice of the assessment or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of Review’s final order or which has been affirmed on judicial review, as provided in §16-5D-13 of this code. All money collected by assessments of civil penalties or interest will be paid into a special resident benefit account and will be applied by the secretary only for the protection of the health or property of residents of assisted living residences operated within the state that the secretary finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of an assisted living residence pending correction of deficiencies, or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in §16-5D-12 of this code. In addition to any other rights of appeal conferred upon an assisted living residence pursuant to this section, an assisted living residence shall have the right to request a hearing and seek judicial review pursuant to §16-5D-12 and §16-5D-13 of this code to contest the citing by the secretary of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.
§16-5D-11. Enforcement actions; assessment of interest; collection of assessments; hearings.

(a) The secretary will, by order, impose a ban on the admission of residents or reduce the bed quota of the assisted living residence, or any combination thereof, where he or she finds upon inspection of the assisted living residence that the licensee is not providing adequate care under the assisted living residence’s existing bed quota and that reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate care. Any notice to a licensee of reduction in quota or ban on new admissions will include the terms of the order, the reasons therefor, and the date set for compliance.

(b) The secretary may suspend or revoke a license issued under this article or take other action as set forth in this section if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of the secretary of a license issued by the secretary or the withdrawal of an application for a license after it has been filed with the secretary, may not deprive the secretary of the secretary’s authority to institute or continue an enforcement action or a proceeding for the denial of a license application against the licensee or applicant upon any ground provided by law or to deny the license application or suspend or revoke the license or otherwise take enforcement action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the secretary, the circuit court of the county in which the conduct has occurred or is occurring or the Circuit Court of Kanawha County may determine that an assisted living residence’s deficiencies under this article constitute an emergency immediately jeopardizing the
health, safety, welfare, or rights of its residents and issue an order to:

(1) Close the assisted living residence;

(2) Transfer residents in the assisted living residence to other facilities; or

(3) Appoint temporary management to oversee the operation of the assisted living residence and to assure the health, safety, welfare, and rights of the assisted living residence’s residents where there is a need for temporary management while:

(A) There is an orderly closure of the assisted living residence; or

(B) Improvements are made to bring the assisted living residence into compliance with all the applicable requirements of this article.

(e) If the secretary petitions a circuit court for the closure of an assisted living residence, the transfer of residents, or the appointment of a temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the secretary and the licensee or operator of the assisted living residence may participate and present evidence.

(f) A circuit court may divest the licensee or operator of possession and control of an assisted living residence in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare, and rights of the residents of the assisted living residence, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the assisted living residence, or to repair or improve the assisted living residence so as to return
it to compliance with applicable requirements and the power
to receive, conserve, and expend funds, including payments
on behalf of the licensee or operator of the assisted living
residence. Priority shall be given to expenditures for current
direct resident care or the transfer of residents.

(g) The person charged with temporary management:

(1) Shall be an officer of the court;

(2) Shall be paid by the licensee;

(3) Is not liable for conditions at the assisted living
residence which existed or originated prior to his or her
appointment; and

(4) Is not personally liable, except for his or her own
gross negligence and intentional acts which result in injuries
to persons or damage to property at the assisted living
residence during his or her temporary management.

(h) No person may impede the operation of temporary
management. There shall be an automatic stay for a 90-day
period subsequent to the establishment of temporary
management of any action that would interfere with the
functioning of the assisted living residence, including, but
not limited to, cancellation of insurance policies,
termination of utility services, attachments to working
capital accounts, foreclosures, evictions, and repossessions
of equipment used in the assisted living residence.

(i) A temporary management established for the purpose
of making improvements to bring the assisted living
residence into compliance with applicable requirements
may not be terminated until the court has determined that
the assisted living residence has the management capability
to ensure continued compliance with all applicable
requirements; except if the court has not made such
determination within six months of the establishment of the
temporary management, the temporary management
terminates by operation of law at that time, and the assisted
living residence shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court and after deducting from receipts the costs of the temporary management, expenditures, and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the assisted living residence.

(j) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per year beginning 30 days after receipt of notice of the assessment or 30 days after receipt of the Board of Review’s final order following a hearing, whichever is later. All assessments against an assisted living residence that are unpaid shall be added to the assisted living residence’s licensure fee and may be filed as a lien against the property of the licensee or operator of the assisted living residence. Funds received from assessments shall be deposited as funds received as provided in §16-5D-10 of this code.

(k) The opportunity for a hearing on an action by the secretary taken under this section shall be as provided in §16-5D-12 of this code.

§16-5D-12. License denial; limitation, suspension, or revocation.

(a) The secretary shall issue an order denying, limiting, suspending, or revoking a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The secretary may issue an order revoking a program’s license and prohibit all licensed disciplines associated with the assisted living residence from practicing at the assisted living residence based upon an annual, periodic, complaint, verification, or other inspection and evaluation.

(b) Before any order is issued by the secretary denying, limiting, suspending, or revoking a license, written notice
will be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the secretary’s order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation under this article. If a formal hearing is requested, the applicant or licensee and the secretary shall proceed in accordance with the provisions of §29A-5-1 et seq. of this code.

(d) If a license is denied or revoked as herein provided, a new application for license will be considered by the secretary if, when, and after the conditions upon which the denial was based have been corrected and evidence of this fact has been furnished. A new license will then be granted after proper inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(e) Any applicant or licensee who is dissatisfied with the decision as a result of the formal hearing provided in this section may, within 30 days after receiving notice of the decision, petition the Circuit Court of Kanawha County, in term or in vacation, for judicial review of the decision.

(f) If the license of an assisted living residence is denied, limited, suspended, or revoked, the administrator, any owner of the assisted living residence, or owner or lessor of the assisted living residence property shall cease to operate the facility as an assisted living residence as of the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the assisted living residence property is responsible for removing all signs and symbols identifying the premises as an assisted living residence within 30 days. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.
(g) Upon the effective date of the denial, limitation, suspension, or revocation, the administrator of the assisted living residence shall advise the secretary and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the secretary. Medications that are purchased or held by an assisted living residence that is not licensed may be deemed adulterated.

(h) If the license of an assisted living residence is suspended or revoked, any person named in the licensing documents of the assisted living residence, including persons owning or operating the assisted living residence, may not, as an individual or as part of a group, apply to operate another assisted living residence for up to five years after the date of suspension or revocation.

(i) The period of suspension for the license of an assisted living residence will be prescribed by the secretary, but may not exceed one year.


(a) Any applicant or licensee or the secretary who is adversely affected by the decision as a result of the formal hearing provided for in §16-5D-12 of this code may, within 30 days after receiving notice of the decision, petition the Circuit Court of Kanawha County, in term or in vacation, for judicial review of the decision.

(b) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant, licensee, or the secretary may appeal from the court’s decision to the Supreme Court of Appeals.

(c) The judgment of the circuit court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 et seq. of this code.
§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains or is engaged in establishing or maintaining an assisted living residence without a license granted under §16-5D-6 of this code, or who prevents, interferes with or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100 or by imprisonment in jail for a period of not more than 90 days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with imprisonment in jail for a period of not more than 90 days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The secretary may in his or her discretion bring an action to enforce compliance with this article or any rule, or order hereunder, whenever it appears to the secretary that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the secretary that any person has aided, abetted, or caused or is aiding, abetting, or causing such an act or practice. Upon application by the secretary, the circuit court of the county in which the conduct has occurred or is occurring, or the Circuit Court of Kanawha County shall have jurisdiction to grant without bond a permanent or temporary injunction, decree, or restraining order.

(c) Whenever the secretary refuses to grant or renew a license or revokes a license required by law to operate or conduct an assisted living residence or orders a person to refrain from conduct violating the rules of the secretary, and the person deeming himself or herself aggrieved by the refusal, revocation, or order appeals the action of the secretary, the court may, during pendency of
the appeal, issue a restraining order or injunction upon proof that the operation of the assisted living residence or its failure to comply with the order of the secretary adversely affects the well-being or safety of the residents of the assisted living residence. Should a person who is refused a license or the renewal of a license to operate or conduct an assisted living residence or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the secretary, fails to appeal or should such appeal be decided favorably to the secretary, then the court shall issue a permanent injunction upon proof that the person is operating or conducting an assisted living residence without a license as required by law or has continued to violate the rules of the secretary.

(d) Any assisted living residence that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation shall be liable to the resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit and that the resident has been injured as a result of the deprivation and unless there is a finding that the assisted living residence exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury. In addition, where the deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies may not be required prior to commencement of suit hereunder.
(e) The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance pursuant to §9-5-1 et seq. of this code and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available pursuant to §9-5-1 et seq. of this code.

(f) Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, shall be null and void as contrary to public policy.

(g) The penalties and remedies provided in this section are cumulative and shall be in addition to all other penalties and remedies provided by law.

§16-5D-16. Availability of reports and records.

[Repealed.]

§16-5D-17. Licenses and rules in force.

[Repealed.]
to authorizing the establishment of a Joint Task Force on Milk Rules and Regulations; providing for the appointment of certain members by the Governor; authorizing the task force to study milk rules and regulations; providing for reimbursement of actual expenses for members; providing task force members may receive no compensation; requiring the task force to propose legislation; and providing for the sunset of the task force.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-5a. Joint Task Force on Milk Rules and Regulations.

(a) The Legislature finds that it is in the public interest to examine the potential benefit and economies of scale by transferring some or all authority to promulgate milk rules and regulations from the Department of Health and Human Resources to the Department of Agriculture.

(b) On or before June 1, 2018, the Governor shall appoint a Joint Task Force on Milk Rules and Regulations composed of the following 15 members:

(1) One representative from the Department of Agriculture;

(2) One representative from the Bureau for Public Health;

(3) One representative of the West Virginia University Extension Service;

(4) One representative from local health departments in the state;

(5) Two representatives from a trade or industry group representing the farming and agriculture industry in the state, at least one of whom shall be a dairy farmer;
(6) Three citizen members;

(7) Three senators as recommended by the President of the Senate, no more than two of whom shall be from the same political party; and

(8) Three delegates as recommended by the Speaker of the House of Delegates, no more than two of whom shall be from the same political party.

(c) The representative from the Department of Agriculture shall preside over the work group and shall provide staff to facilitate meetings of the joint task force. The joint task force shall examine the potential benefit and economies of scale of transferring some or all authority to promulgate milk rules and regulations from the Department of Health and Human Resources to the Department of Agriculture. The task force shall recommend legislation to the Governor and to the Joint Committee on Government and Finance no later than December 31, 2018.

(d) The expenses of the members on the task force shall be paid equally from the funds of the Department of Agriculture, the Bureau for Public Health, and the West Virginia University Extension Service: Provided, That the members of the joint task force may receive no compensation for their services other than actual expenses incurred in the discharge of their duties as members of the joint task force.

(e) The authority of the Joint Task Force on Milk Rules and Regulations shall sunset and expire and is of no force and effect after December 31, 2018, or upon submission of any recommendations or draft legislation, whichever comes first.
AN ACT to amend and reenact §16-5B-18 of the Code of West Virginia, 1931, as amended, relating to designation of hospitals for stroke treatment; adding a designation as a thrombectomy-capable stroke center; modifying the makeup of the advisory committee; providing certain functions to the advisory committee; permitting the advisory committee to make recommendations to the Office of Emergency Medical Services; staggering the terms of the advisory committee members; providing for a database; and prohibiting certain inspections of hospitals conducted by the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-18. Designation of comprehensive, primary, acute, and thrombectomy capable stroke-ready hospitals; reporting requirements; rulemaking.

(a) A hospital, as that term is defined in §16-5B-1 of this code, shall be recognized by the Office of Emergency Medical Services as a comprehensive stroke center (CSC), thrombectomy-capable stroke center (TSC), primary stroke center (PSC), or an acute stroke-ready hospital (ASRH), upon submitting verification of certification as granted by the American Heart Association, the joint commission, or other nationally recognized organization to the Office of
Emergency Medical Services. A hospital shall immediately notify the Office of Emergency Medical Services of any change in its certification status.

(b) The Office of Emergency Medical Services shall gain access to, and utilize, a nationally recognized stroke database that compiles information and statistics on stroke care that align with the stroke consensus metrics developed and approved by the American Heart Association and the American Stroke Association, for the purpose of improving stroke care and access across the State of West Virginia. The Office of Emergency Medical Services shall, upon request, provide the data accessed and utilized relating to comprehensive stroke centers, thrombectomy-capable stroke centers, primary stroke centers, and acute stroke-ready hospitals to the advisory committee in §16-5B-18(d) of this code.

(c) The Office of Emergency Medical Services shall provide annually, by June 1, a list of all hospitals recognized pursuant to the provisions of §16-5B-18(a) of this code to the medical director of each licensed emergency medical services agency in this state. This list shall be maintained by the Office of Emergency Medical Services and shall be updated annually on its website.

(d) No later than July 1, 2018, the Secretary of the Department of Health and Human Resources shall establish and appoint a stroke advisory committee which shall function as an advisory body to the secretary and report no less than biannually at regularly scheduled meetings. Its functions shall include:

(1) Increasing stroke awareness;

(2) Promoting stroke prevention and health policy recommendations relating to stroke care;

(3) Advising the Office of Emergency Medical Services on the development of stroke networks;
(4) Utilizing stroke care data to provide recommendations to the Office of Emergency Medical Services to improve stroke care throughout the state;

(5) Identifying and making recommendations to overcome barriers relating to stroke care; and

(6) Review and make recommendations to the State Medical Director of the Office of Emergency Medical Services regarding prehospital care protocols including:

(A) The assessment, treatment, and transport of stroke patients by licensed emergency medical services agencies; and

(B) Plans for the triage and transport, within specified time frames of onset symptoms, of acute stroke patients to the nearest comprehensive stroke center, thrombectomy-capable stroke center, primary stroke center, or acute stroke-ready hospital.

(e) The advisory committee as set forth §16-5B-18(d) of this code shall consist of no more than 14 members. Membership of the advisory committee shall include:

(1) A representative of the Department of Health and Human Resources;

(2) A representative of an association with the primary purpose of promoting better heart health;

(3) A registered emergency medical technician;

(4) Either an administrator or physician representing a critical access hospital;

(5) Either an administrator or physician representing a teaching or academic hospital;

(6) A representative of an association with the primary purpose of representing the interests of all hospitals throughout the state; and
(7) A clinical and administrative representative of hospitals from each level of stroke center certification by a national certifying body (CSC, TSC, PSC, and ASRH).

(f) Of the members first appointed, three shall be appointed for a term of one year, three shall be appointed for a term of two years, and the remaining members shall be appointed for a term of three years. The terms of subsequent appointees shall be three years. Members may be reappointed for additional terms.

(g) Nothing in this section may permit the Office of Emergency Medical Services to conduct inspections of hospitals in relation to recognition as a stroke center as set forth in this section: Provided, That nothing in this section may preclude inspections of hospitals by the Office of Emergency Medical Services which are otherwise authorized by this code.

CHAPTER 199

(Com. Sub. for S. B. 543 - By Senators Trump and Cline)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended, relating generally to confidentiality of certain medical records; eliminating disclosure exception for treatment or internal review purposes; eliminating 30-day requirement; eliminating requirement that provider make good faith effort to obtain consent from the patient or legal representative; eliminating requirement that the minimum information necessary is released for a specifically stated purpose; eliminating
requirement that 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 adopting provisions
of federal law which pertain to disclosure of protected health
information.

Be it enacted by the Legislature of West Virginia:

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 de-identified information from which
there is no possible means to identify a client or patient.

(b) Confidential information shall not be disclosed,
except:

(1) In a proceeding under §27-5-4 of this code to
disclose the results of an involuntary examination made
pursuant to §27-5-2, §27-5-3, or §27-5-4 of this code;

(2) In a proceeding under §27-6A-1 et seq. of this code
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 §61-7A-1 et seq. 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) Pursuant to and as provided for under the federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 in 45 CFR §164, as amended under the Health Information Technology for Economic and Clinical Health Act of the American and the Omnibus Final Rule, 78 FR 5566; or

(7) In a proceeding held under §44A-3-17 of this code or as required by §44A-3-18 of this code.

CHAPTER 200

(Com. Sub. for S. B. 575 - By Senators Takubo, Arvon, Azinger, Boley, Boso, Clements, Cline, Drennan, Maroney, Maynard, Rucker, Sypolt, Stollings and Plymale)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §16-2D-8 and §16-2D-9 of the Code of West Virginia, 1931, as amended, all relating to the
approval of additional beds for intermediate care facilities; providing that persons in more restrictive setting will be given an option to move; excluding persons currently on the intellectual and developmental disabilities waiver; placing these persons on an enrollment list; developing a monitoring committee; setting out membership of the committee; providing purpose of the monitoring committee; requiring reinvestment of savings; providing that all other relevant regulatory laws apply; and providing that additional beds may be developed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-8. Proposed health services that require a certificate of need.

(a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following proposed health services may not be acquired, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, acquisition, or other establishment of a health care facility;

(2) The partial or total closure of a health care facility with which a capital expenditure is associated;

(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:
(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;

(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(C) In the case of donated property, on the date on which the gift is completed under state law.

(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(6) The addition of ventilator services by a hospital;

(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;

(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;

(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and

(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved health service for which a certificate of need is in effect;

(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made; and
(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

(1) Constructing, developing, acquiring, or establishing a birthing center;

(2) Providing radiation therapy;

(3) Providing computed tomography;

(4) Providing positron emission tomography;

(5) Providing cardiac surgery;

(6) Providing fixed magnetic resonance imaging;

(7) Providing comprehensive medical rehabilitation;

(8) Establishing an ambulatory care center;

(9) Establishing an ambulatory surgical center;

(10) Providing diagnostic imaging;

(11) Providing cardiac catheterization services;

(12) Constructing, developing, acquiring, or establishing kidney disease treatment centers, including freestanding hemodialysis units;

(13) Providing megavoltage radiation therapy;

(14) Providing surgical services;

(15) Establishing operating rooms;

(16) Adding acute care beds;
(17) Providing intellectual developmental disabilities services;

(18) Providing organ and tissue transplants;

(19) Establishing an intermediate care facility for individuals with intellectual disabilities;

(20) Providing inpatient services;

(21) Providing hospice services;

(22) Establishing a home health agency;

(23) Providing personal care services; and

(24) (A) Establishing no more than six four-bed transitional intermediate care facilities: Provided, That none of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility. This subdivision terminates upon the approval of the sixth four-bed intermediate care facility.

(B) Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home- and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.

(C) The department shall work to find the most integrated placement based upon an individualized assessment. Individuals already on the IDD waiver will not be considered for placement in the 24 new intermediate care beds.
(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the Statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department’s transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home- and community-based waiver status and/or utilizing other community-based options and securing the most integrated setting for each individual.

(E) Any savings resulting from individuals moving from more expensive institutional care or out-of-state placements shall be reinvested into home- and community-based services for individuals with intellectual developmental disabilities.

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

§16-2D-9. Health services that cannot be developed.

Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a certificate of need but the authority may not issue a certificate of need to:

(1) A health care facility adding intermediate care or skilled nursing beds to its current licensed bed complement, except as provided in §16-2D-11(c)(23) of this code;

(2) A person developing, constructing, or replacing a skilled nursing facility except in the case of facilities designed to replace existing beds in existing facilities that may soon be deemed unsafe or facilities utilizing existing
licensed beds from existing facilities which are designed to meet the changing health care delivery system; and

(3) Add beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981) including the 24 beds provided in §16-2D-8(b)(24) of this code; and

(4) An opioid treatment program.

CHAPTER 201

(Com. Sub. for S. B. 603 - By Senators Drennan, Blair, Gaunch, Maroney, Maynard, Plymale and Trump)

[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §27-5-2 and §27-5-3 of the Code of West Virginia, 1931, as amended, all relating to proceedings for involuntary custody for examination; adding licensed professional counselors to the list of professionals that may examine an individual by order of a circuit court, mental hygiene commissioner, or magistrate; providing that a licensed professional counselor may only perform the examination if he or she has been previously authorized by an order of the circuit court to do so; and removing redundant language.

Be it enacted by the Legislature of West Virginia:
ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the individual to be examined is addicted, as defined in §27-1-11 of this code, or is mentally ill and, because of his or her addiction or mental illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and certification by a physician or psychologist.

Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services for the individual’s mental illness or addiction.

(b) The person making the application shall make the application under oath.

(c) Application for involuntary custody for examination may be made to the circuit court or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found. When no circuit court judge or mental hygiene commissioner is available for immediate presentation of the application, the application may be made to a magistrate designated by the chief judge of the judicial circuit to accept applications and hold probable cause hearings. A designated magistrate before whom an application or matter is pending may, upon
the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application as may be required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner, or designated magistrate may enter an order for the individual named in the application to be detained and taken into custody for the purpose of holding a probable cause hearing as provided in §27-5-2(g) of this code for the purpose of an examination of the individual by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 et seq. of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 et seq. of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 et seq. of this code, a physician assistant practicing in compliance with §30-3-1 et seq. of this code, or a physician assistant practicing in compliance with §30-3E-1 et seq. of this code: Provided, That a licensed professional counselor, a licensed independent clinical social worker, a physician assistant or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or addiction sufficient to make the determinations as are required by the provisions of this section. The examination is to be provided or arranged by a community mental health
center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the hearing be held forthwith and is to provide for the appointment of counsel for the individual: Provided, however, That the order may allow the hearing to be held up to 24 hours after the person to be examined is taken into custody rather than forthwith if the circuit court of the county in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane treatment of persons: Provided further, That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or in the event of a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual’s existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, “psychiatric emergency” means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has within the preceding 72 hours performed the examination required by the provisions of this subsection, the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding the provisions of this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or
addicted or is determined to be mentally ill or addicted but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit court, or designated magistrate before whom the matter is pending the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate designated by the chief judge of the judicial circuit, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours.

The individual must be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her, and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not there is probable cause to believe that the individual, as a result of mental illness or addiction, is likely to cause serious harm to himself or herself or to others.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for addiction to be involuntarily
hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a result of mental illness or addiction, is likely to cause serious harm to himself, herself, or others and because of mental illness or addiction requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual’s circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or addiction remains
likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of §27-5-3 of this code may be entered. In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable insurance coverage, including, but not limited to, private insurance or Medicaid, the Secretary of the Department of Health and Human Resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: Provided, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: Provided, however, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment
with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

(i) If the certifying physician or psychologist determines that a person requires involuntary hospitalization for an addiction to a substance which, due to the degree of addiction, creates a reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretary of the Department of Health and Human Resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) Admission to a mental health facility for examination. — Any individual may be admitted to a mental
health facility for examination and treatment upon entry of
an order finding probable cause as provided in §27-5-2 of
this code and upon certification by a physician,
psychologist, licensed professional counselor, licensed
independent clinical social worker practicing in compliance
with the provisions of §30-30-1 et seq. of this code or an
advanced nurse practitioner with psychiatric certification
practicing in compliance with §30-7-1 et seq. of this code
that he or she has examined the individual and is of the
opinion that the individual is mentally ill or addicted and,
because of such mental illness or addiction, is likely to cause
serious harm to himself, herself, or to others if not
immediately restrained: Provided, That the opinions offered
by an independent clinical social worker or an advanced
nurse practitioner with psychiatric certification must be
within their particular areas of expertise, as recognized by
the order of the authorizing court.

(b) Three-day time limitation on examination. — If the
examination does not take place within three days from the
date the individual is taken into custody, the individual shall
be released. If the examination reveals that the individual is
not mentally ill or addicted, the individual shall be released.

(c) Three-day time limitation on certification. — The
certification required in §27-5-3(a) of this code shall be
valid for three days. Any individual with respect to whom
the certification has been issued may not be admitted on the
basis of the certification at any time after the expiration of
three days from the date of the examination.

(d) Findings and conclusions required for certification. —
A certification under this section must include findings and
conclusions of the mental examination, the date, time and
place of the examination, and the facts upon which the
conclusion that involuntary commitment is necessary is based.

(e) Notice requirements. — When an individual is
admitted to a mental health facility pursuant to the
provisions of this section, the chief medical officer of the
facility shall immediately give notice of the individual’s admission to the individual’s spouse, if any, and one of the individual’s parents or guardians or if there is no spouse and are no parents or guardians, to one of the individual’s adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual’s residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) Five-day time limitation for examination and certification at mental health facility. — After the individual’s admission to a mental health facility, he or she may not be detained more than five days, excluding Sundays and holidays, unless, within the period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is mentally ill or addicted and is likely to injure himself, herself, or others if allowed to be at liberty.

(g) Fifteen-day time limitation for institution of final commitment proceedings. — If, in the opinion of the examining physician, the patient is mentally ill or addicted and because of the mental illness or addiction is likely to injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within 15 days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within such 15-day period, the patient shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) Thirty-day time limitation for conclusion of all proceedings. — If all proceedings as provided in §27-3-1 et seq. and §27-4-1 et seq. of this code are not completed within 30 days from the date of institution of the proceedings, the patient shall be immediately released.
CHAPTER 202

(Com. Sub. for H. B. 4035 - By Delegates Summers, Ellington, Householder, Rohrbach, Byrd, Capito, Hollen, Dean, Butler, Frich and Rowan)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-55-1, §16-55-2, §16-55-3, §16-55-4, §16-55-5, §16-55-6, and §16-55-7, all relating to palliative care; creating a state advisory coalition to improve palliative care in West Virginia; providing definitions; designating members of the coalition; providing for the powers and duties of the coalition; establishing that certain and other state agencies shall cooperate with the coalition; and establishing a termination date for the coalition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 55. STATE ADVISORY COALITION ON PALLIATIVE CARE.

§16-55-1. Purpose.

1 The purpose of the coalition created under this article is
2 to improve quality and delivery of patient centered and
3 family focused palliative care in West Virginia.

§16-55-2. Definitions.

1 As used in this article:

2 “Appropriate” means consistent with applicable legal,
3 health, and professional standards; the patient’s clinical and
other circumstances; and the patient’s reasonably known wishes and beliefs.

“Medical care” means services provided, requested, or supervised by a physician or advanced practice nurse.

“Palliative care” means patient and family centered medical care that optimizes quality of life by anticipating, preventing, and treating suffering caused by serious illness throughout the continuum of illness, involves addressing physical, emotional, social, and spiritual needs, and facilitates patient autonomy, access to information, and choice.

“Serious Illness” means any medical illness or physical injury or condition that substantially impacts quality of life for more than a short time.

§16-55-3. Creation of the State Advisory Coalition on Palliative Care.

There is created the State Advisory Coalition on Palliative Care. The administrative functions of the coalition are the responsibility of staff assigned to the Joint Committee on Health.

§16-55-4. Members of the Advisory Coalition on Palliative Care.

(a) The Advisory Coalition on Palliative Care consists of the individuals appointed by the President of the Senate and the Speaker of the House of Delegates who are health professionals having palliative care work experience and/or expertise in palliative care delivery models in a variety of inpatient, outpatient, and community settings and with a variety of populations, including pediatric, youth, and adults.

(b) The members include:
(1) A physician who practices palliative care in this state and is licensed pursuant to the provisions of §30-3-1 et seq. of this code, who shall serve as chair of the coalition for the first meeting until a chairman is selected by the Advisory Coalition;

(2) A physician;

(3) A registered professional nurse;

(4) A social worker;

(5) A pharmacist;

(6) A spiritual advisor;

(7) A patient advocate;

(8) A family caregiver advocate;

(9) One additional palliative care practitioner; and

(10) The Executive Director of the Center for End of Life Care, or his or her designee.

(c) The co-chairs of the Joint Committee on Health serve as nonvoting members, ex-officio.

(d) Membership on the coalition shall be distributed among the congressional districts of the state, and each congressional district shall be represented in the membership of the coalition.

§16-55-5. Powers and duties.

(a) The coalition shall consult with and advise the Legislature on matters related to the establishment, maintenance, operation, and outcomes evaluation of palliative care initiatives in the state. The coalition may:

(1) Meet at least quarterly or at the call of the chairman. A quorum is a simple majority of the coalition;
(2) Keep accurate records of the actions of the coalition;

(3) Make recommendations to the Legislature as required by this article;

(4) Provide guidance to the Legislature on potential statutory solutions relative to regulation of palliative care;

(5) Establish workgroups and clinical advisory committees as the coalition considers necessary to address pertinent issues related to palliative care and to provide consistency in the development of further regulation;

(6) Consult with entities and persons with expertise as the coalition considers necessary in the fulfillment of its duties. This can include public and private sector partnerships;

(7) Establish a system for identifying patients or residents who could benefit from palliative care;

(8) Provide information about and facilitate access to appropriate palliative care; and

(9) Offer any additional guidance to the Legislature which the coalition sees is within its scope which would further enhance the palliative care.

(b) The coalition shall report its findings to the Joint Committee on Health by December 31, 2019, and annually after that until the coalition terminates pursuant to the provisions of this article. The report shall include, at a minimum, the following:

(1) Conclusions and recommendations to promote a better means for palliative care;

(2) Recommendations for statutory and regulatory modifications;
36 (3) Identification of any action which may be taken by
37 the Legislature to better foster awareness of palliative care
38 issues in this state;
39
40 (4) A means to raise palliative care awareness; and
41
42 (5) Any other ancillary issues relative to palliative care.

§16-55-6. Cooperation with the coalition.

1 The Department of Health and Human Resources, the
2 West Virginia Insurance Commission, the Public
3 Employees Insurance Agency, the Center for End of Life
4 Care, and all other entities of state government shall
5 cooperate with the coalition in the exchange of data,
6 information, and expertise if so requested by the coalition,
7 including, but not limited to:
8
9 (1) Providing the entity’s plans to improve palliative
10 care in West Virginia;
11
12 (2) Sharing information on the financial impact of
13 palliative care on the State of West Virginia;
14
15 (3) Providing an assessment of the benefits of
16 implemented programs and activities aimed at bettering
17 palliative care;
18
19 (4) Assisting in the development or revision of detailed
20 action plans to improve palliative care; and
21
22 (5) Providing resources required to implement the plan.

§16-55-7. Sunset.

1 The coalition terminates on December 31, 2021, unless
2 continued by act of the Legislature.
AN ACT to amend and reenact §16-5C-2 and §16-5C-5 of the Code of West Virginia, 1931, as amended, all relating to permitting certain portions of certified nurse aide training to be provided through distance learning technologies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. NURSING HOMES.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning appears from the context:

3 “Deficiency” means a nursing home’s failure to meet the requirements specified in §16-5C-1 et seq. of this code and rules promulgated thereunder.

5 “Director” means the secretary of the Department of Health and Human Resources or his or her designee.

7 “Distance learning technologies” means computer-centered technologies delivered over the internet, broadcasts, recordings, instructional videos, or videoconferencing.

9 “Household” means a private home or residence which is separate from or unattached to a nursing home.
“Immediate jeopardy” means a situation in which the nursing home’s noncompliance with one or more of the provisions of this article or rules promulgated thereunder has caused or is likely to cause serious harm, impairment or death to a resident.

“Nursing home” or “facility” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article. Nothing contained in this article applies to nursing homes operated by the federal government; or extended care facilities operated in conjunction with a hospital; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 et seq. of this code.

“Nursing care” means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedure contributing to rehabilitation, and
administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person.

“Resident” means an individual living in a nursing home.

“Review organization” means any committee or organization engaging in peer review or quality assurance, including, but not limited to, a medical audit committee, a health insurance review committee, a professional health service plan review committee or organization, a dental review committee, a physician’s advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, any committee or organization established or required under state or federal statutes, rules or regulations, and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of residents for the purposes of:

Evaluating and improving the quality of health care rendered; reducing morbidity or mortality; or establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care.

“Sponsor” means the person or agency legally responsible for the welfare and support of a resident.

“Person” means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state.

“Substantial compliance” means a level of compliance with the rules such that no deficiencies exist or such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.
The director may define in the rules any term used herein which is not expressly defined.

§16-5C-5. Rules; minimum standards for nursing homes.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code. The director shall recommend the adoption, amendment or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article.

(b) The director shall recommend rules establishing minimum standards of operation of nursing homes including, but not limited to, the following:

(1) Administrative policies, including: (A) An affirmative statement of the right of access to nursing homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (B) a statement of the rights and responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement of residents’ rights as included in the United States Department of Health and Human Services regulations, in force on the effective date of this article, governing participation of nursing homes in the Medicare and Medicaid programs pursuant to titles eighteen and nineteen of the Social Security Act;

(2) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(3) Qualifications of facility’s administrators, medical directors, nurses, aides, and other personnel;

(4) Safety requirements;

(5) Sanitation requirements;
(6) Personal services to be provided;

(7) Dietary services to be provided;

(8) Medical records;

(9) Social and recreational activities to be made available;

(10) Pharmacy services;

(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights;

(15) Visitation privileges that:

(A) Permit immediate access to a resident, subject to the resident’s right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(B) Permit immediate access to a resident, subject to reasonable restrictions and the resident’s right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and

(C) Permit access to other specific persons or classes of persons consistent with state and federal law.

(16) Admission, transfer and discharge rights.

(c) The director shall permit the nonclinical instruction portions of a nurse aide training program approved by the Office of Health Facility Licensure and Certification to be provided through distance learning technologies.
AN ACT to amend and reenact §16-53-1 of the Code of West Virginia, 1931, as amended, relating to the establishment of substance abuse treatment and recovery facilities; and permitting the Department of Health and Human Resources to provide funding to facilities that provide peer-support services which follow specified standards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 53. ESTABLISHING ADDITIONAL SUBSTANCE ABUSE TREATMENT FACILITIES.

§16-53-1. Establishment of substance abuse treatment facilities.

1 (a) The Secretary of the Department of Health and Human Resources shall ensure that beds for purposes of providing substance abuse treatment and/or recovery services in existing or newly constructed facilities are made available in locations throughout the state which the department determines to be the highest priority for serving the needs of the citizens of the state.

8 (b) The secretary shall identify and allocate the beds to privately owned facilities to provide substance abuse treatment services.

11 (c) These facilities shall:
(1) Give preference to West Virginia residents;

(2) Accept payment from private pay patients, third person payors or patients covered by Medicaid;

(3) Offer long-term treatment, based upon need, of up to one year; and

(4) Work closely with the Adult Drug Court Program, provided for in §62-15-1 et seq. of this code.

(d) Any facility subject to the provisions of this article must:

(1) Be licensed by this state to provide addiction and substance abuse services; or

(2) Be a peer-led facility that follows standards set forth by the National Alliance for Recovery Residences and offers access to peer support services.

CHAPTER 205

(S. B. 468 - By Senators Gaunch and Boso)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §12-4-7 of the Code of West Virginia, 1931, as amended, relating to changing the date for submission of the Auditor’s annual report; adding the President of the Senate and the Speaker of the House of Delegates as recipients of the annual report; and adding requirement that certain salary information be included in the report for the prior calendar year.

Be it enacted by the Legislature of West Virginia:
ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

§12-4-7. Annual state dollar report of Auditor.

The Auditor shall furnish annually to the Governor, the President of the Senate, and the Speaker of the House of Delegates on or before January 15, a report detailing financial information for the prior calendar and fiscal year. It shall contain a statement of the receipts and disbursements, under the proper general heads, during the preceding fiscal year, and show the balance in the Treasury at the beginning and end of that year. It shall also contain an estimate of the revenue and expenditures for the current year, with similar statements and estimates respecting the school fund. It shall show the indebtedness of the state and the balances standing at the end of the year to the credit of the several unexpired appropriations, specifying in each case the date when the appropriation was made. It shall also contain information relating to the salaries of state employees, including notation of salaries greater than $80,000 paid during the prior calendar year. The report shall be accompanied with an explanation of the amounts of receipts and disbursements and the balances and estimates reported. In it the Auditor shall point out any defects which may occur to him or her in the revenue laws. Furthermore, the Auditor shall suggest the remedies for those deficits. If the Auditor is of the opinion that the future revenue is likely to prove insufficient, then the Auditor shall recommend plans for increasing the revenue and suggest new subjects of taxation, or additional taxes on the old, as he or she may deem proper.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §6-9B-1, §6-9B-2, §6-9B-3 and §6-9B-4, all relating directing the West Virginia Auditor to develop and maintain a searchable financial transparency website; enumerating certain legislative findings; defining certain terms; setting forth the necessary contents of the website; setting forth the date by which the website is to be developed and made publicly available; requiring that certain governmental agencies provide the Auditor with certain information to be made publicly available on the website; and requiring the Auditor to publicly identify any governmental agency that fails to comply with certain requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9B. OPEN GOVERNMENTAL FINANCES.

§6-9B-1. Legislative findings.

(a) The Legislature finds that taxpayers should be able to easily access the details of how the state is spending their tax dollars and what performance results are achieved for those expenditures. It is the intent of the Legislature, therefore, to direct the State Auditor to create and maintain
a searchable financial transparency website detailing where, how much, and for what purpose taxpayer moneys in state government are expended.

(b) It is also the intent of the Legislature that the searchable website be made compatible for future inclusion of counties or municipalities that desire to have their own searchable financial transparency website.

§6-9B-2. Definitions.

For the purpose of this article:

(a) “Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated or approved by the State Auditor to perform the service.

(b) “Funding action or expenditure” includes details on the type of spending (grant, contract, appropriations, etc.). This includes, but is not limited to, tax exemptions, tax credits or any expenditure from any civil contingency or similar fund. Where possible, a hyperlink to the actual grants or contracts shall be provided.

(c) “Funding source” means the state account from which the funding action or expenditure is appropriated.

(d) “Governmental Agency” means a state department, office, board, commission, bureau, division, institution or institution of higher education under the direction and control of the Executive Branch, Legislative Branch or Judicial Branch of state government. This includes individual state agencies and programs, elected offices, as well as those programs and activities that cross agency lines.

(e) “Recipients” means any individual, person, corporation, association, union, limited liability corporation, limited liability partnership, legal business entity including nonprofit organizations, grantee, contractor or any county, municipal or other local government entity
that directly receives the benefit of a funding action or expenditure.

(f) “Searchable financial transparency website” means a website that allows the public at no cost to search and aggregate information regarding the state’s budget and spending.

§6-9B-3. Searchable financial transparency website created.

No later than July 1, 2018, the State Auditor shall develop and make publicly available a searchable financial transparency website containing the information specified in §6-9B-4 of this code.

§6-9B-4. Contents of the searchable website.

(a) The Auditor shall include as part of the searchable financial transparency website the following content for a given fiscal year and the 3 immediately preceding fiscal years:

(1) The name and the address, principal location or residence of the recipients of a given funding action or expenditure: Provided, That all federal and state laws and regulations and rules regarding the confidentiality of information and privacy apply;

(2) The amount of funds expended in a given funding action or expenditure;

(3) The governmental agency making a given funding action or expenditure;

(4) The funding source a given funding action or expenditure;

(5) The budget program or activity related to a given funding action or expenditure; and

(6) Additional information as to the funding action or expenditure the Auditor deems valuable for the public.
(b) The searchable financial transparency website shall be updated periodically as new data becomes available. All governmental agencies shall provide to the Auditor, in a format specified by the Auditor, all data that is required to be included in the searchable financial database website no later than 30 days after the data becomes available to the agency. The Auditor shall provide guidance and specifications to governmental agencies to promote compliance with this section.

(c) The Auditor shall make publicly known those governmental agencies that have failed to comply with the requirements of this article.

CHAPTER 207

(Com. Sub. for S. B. 36 - By Senators Woelfel and Plymale)

[Passed March 7, 2018; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2018.]  

AN ACT to amend and reenact §15-2B-2, §15-2B-5, §15-2B-6, and §15-2B-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-9B-4, all relating generally to DNA testing; allowing the West Virginia State Police Forensic Laboratory to use qualified outside entities for DNA testing; clarifying that the State Police shall attempt to contract with the Marshall University Forensic Science Center for certain DNA testing when outsourcing such testing; granting legislative and emergency rule-making authority to the Sexual Assault Forensic Examination Commission; directing the commission to promulgate time frames for DNA sample submission; expanding types of testing the West Virginia State Police Forensic Laboratory may outsource; authorizing
law-enforcement and correctional officers to use reasonable force to obtain DNA samples; providing that DNA samples taken by law-enforcement and corrections personnel in compliance with this article are deemed to be in good faith; exempting law-enforcement and correctional officers from civil and criminal liability for good faith collection of samples done in a reasonable manner consistent with generally accepted practices; directing that erroneously obtained DNA samples be removed from database and samples destroyed; and clarifying that judicial expungement proceedings proceed by petition.

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

**ARTICLE 2B. DNA DATA.**

**§15-2B-2. Policy.**

1 It is the policy of this state to assist federal, state, and local criminal justice and law-enforcement agencies in the identification, detection, and exclusion of individuals who are subjects of the investigation or prosecution of violent crimes, sex-related crimes, and other crimes against the person. In furtherance of such assistance, the Legislature finds:

8 That the analysis of DNA contained in biological evidence that may be recovered from a crime scene facilitates such identification, detection, and exclusion;

11 That the comparison of DNA data recovered from a crime scene with existing DNA records maintained in a central DNA database further facilitates such identification, detection, and exclusion; and

15 That requiring individuals convicted of certain crimes to provide a sample for DNA analysis with the resulting eligible DNA records maintained in a central DNA database will likewise further facilitate the aforementioned identification, detection, and exclusion and may serve to discourage recidivism.
Therefore, the Legislature finds that assisting federal, state, and local criminal justice and law-enforcement agencies through the use and development of DNA analysis is of the utmost importance and urgency in this state and that a DNA identification system shall be established as described in this article.

§15-2B-5. Authority of division to enter into cooperative agreements.

The division may enter into cooperative agreements with public or private agencies or entities to provide a service or facility associated with the administration of the DNA database and databank. In the event the division enters into any agreements for the purposes of: (1) Testing of offender samples for CODIS; (2) criminal paternity cases; (3) criminal casework; or (4) identification of human remains, it shall first attempt to contract with the Marshall University Forensic Science Center for such service or services.

§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.

(a) Any person convicted of an offense described in §61-2-1, §61-2-4, §61-2-7, §61-2-9, §61-2-9a (when that offense constitutes a felony), §61-2-10, §61-2-10a, §61-2-10b, §61-2-12, §61-2-14, or §61-2-14a of this code, or §61-8-12 of this code (when that offense constitutes a felony), shall provide a DNA sample to be used for DNA analysis as described in this article. Further, any person convicted of any offense described in §61-8B-1 et seq. of this code or §61-8D-1 et seq. of this code shall provide a DNA sample to be used for DNA analysis as described in this article.

(b) Any person presently incarcerated in a state correctional facility or in jail in this state after conviction of any offense listed in this section shall provide a DNA sample to be used for purposes of DNA analysis as described in this article.
(c) Any person convicted of a violation of §61-2-5 or §61-2-13 of this code, §61-3-1, §61-3-2, §61-3-3, §61-3-4, §61-3-5, §61-3-7, §61-3-11, §61-3-12 (when that offense constitutes a felony), or §61-3-13(a) of this code, §61-3E-3, §61-3E-4, §61-3E-5, or §61-3E-10 of this code, or §61-4-3 of this code shall provide a DNA sample to be used for DNA analysis as described in this article.

(d) Any person convicted of an offense which constitutes a felony violation of the provisions of §60A-4-401 et seq. of this code; or of an attempt to commit a violation of §61-2-1 or §61-2-14a of this code; or an attempt to commit a violation of §61-8B-1 et seq. of this code shall provide a DNA sample to be used for DNA analysis as described in this article.

(e) The method of taking the DNA sample is subject to the testing methods used by the West Virginia State Police Crime Lab. The DNA sample will be collected using a postage paid DNA collection kit provided by the West Virginia State Police.

(f) When a person required to provide a DNA sample pursuant to this section refuses to comply, the state shall apply to a circuit court for an order requiring the person to provide a DNA sample. Upon a finding of failure to comply, the circuit court shall order the person to submit to DNA testing in conformity with the provisions of this article.

(g) The West Virginia State Police may, where not otherwise mandated, require any person convicted of a felony offense under the provisions of this code to provide a DNA sample to be used for the sole purpose of criminal identification of the convicted person who provided the sample: Provided, That the person is under the supervision of the criminal justice system at the time the request for the sample is made. Supervision includes prison, the regional jail system, parole, probation, home confinement, community corrections program, and work release.
(h) On the effective date of the amendments to this section enacted during the regular session of the Legislature in 2011, any person required to register as a sex offender in this state and who has not already provided a DNA sample in accordance with this article shall provide a DNA sample as determined by the registration agency in consultation with the West Virginia State Police Laboratory. The registering agency is responsible for the collection and submission of the sample under this article.

(i) When this state accepts a person from another state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency or any other provision of law whether or not the person is confined or released, the transferred person must submit a DNA sample, if the person was convicted of an offense in any other jurisdiction which would be considered a qualifying offense as defined in this section if committed in this state, or if the person was convicted of an equivalent offense in any other jurisdiction. The person shall provide the DNA sample in accordance with the rules of the custodial institution or supervising agency. If the transferred person has already submitted a DNA sample that can be found in the national database, the accepting agency is not required to draw a second DNA sample.

(j) If a person convicted of a qualifying offense is released without giving a DNA sample due to an oversight or error or because of the person’s transfer from another jurisdiction, the person shall give a DNA sample for inclusion in the state DNA database after being notified of this obligation. Any such person may request a copy of the court order requiring the sample prior to the collection of the DNA sample.

(k) Duly authorized law-enforcement employees, Regional Jail Authority employees, and Division of Corrections employees may use reasonable force in cases where an individual refuses to provide a DNA sample required under this article, and the employees are not civilly
or criminally liable for the use of reasonable force in the collection of the required DNA sample.

(l) A DNA sample obtained in accordance with the requirements of this article and its use in accordance with this chapter shall be considered to have been obtained in good faith. Should an error be determined to have occurred which caused a person’s DNA to be obtained or submitted improperly, the DNA record shall be removed from CODIS and the DNA sample destroyed unless the individual has another qualifying offense or offenses.

(m) Persons authorized to collect DNA samples shall not be civilly or criminally liable for the collection of a DNA sample pursuant to this article if they perform these duties in good faith and in a reasonable manner according to generally accepted medical or other professional practices.


(a) Any person convicted of a qualifying offense whose DNA record or profile has been included in the state database and whose DNA sample is stored in the state databank or the state’s designated DNA typing, testing, and research laboratory may apply for expungement on the grounds that the qualifying conviction that resulted in the inclusion of the person’s DNA record or profile in the state database or the inclusion of the person’s DNA sample in the state databank has been reversed and the case dismissed. The person seeking expungement, either individually or through an attorney, may petition the court for expungement of the record. A copy of the petition for expungement shall be served on the prosecuting attorney for the judicial district in which the qualifying conviction was obtained not less than 20 days prior to the date of the hearing on the petition. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.
(b) Upon receipt of an order of expungement, the division shall purge the DNA record and all other identifiable information from the state database and the DNA sample stored in the state databank covered by the order. If the individual has more than one entry in the state database and databank, then only the entry covered by the expungement order shall be deleted from the state database or databank.

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-4. Submission, testing, and retention of sexual assault forensic examination kits.

(a) The Sexual Assault Forensic Examination Commission created by §15-9B-1 of this code shall establish a subgroup of persons with subject matter expertise to establish best-practice protocols for the submission, retention, and disposition of sexual assault forensic examination kits collected by health care providers. The commission shall propose rules for legislative approval, in accordance with §29A-3-1 et seq. of this code, detailing best-practice protocols. Upon approval of the legislative rules, local sexual assault forensic examination boards shall follow the rules.

(b) Rules promulgated pursuant to §15-9B-4(a) of this code shall include:

(1) Time frames for submission of sexual assault forensic examination kits in the possession of law enforcement; and

(2) Protocols for storage of DNA samples and sexual assault forensic examination kits.

(c) The commission may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code in order to implement this section: Provided, That no emergency rule may permit the destruction of any DNA evidence.
AN ACT to amend and reenact §60-7-13 of the Code of West Virginia, 1931, as amended, relating generally to private club licensees; continuing Alcohol Beverage Control Enforcement Fund; requiring a private club licensee to timely notify emergency medical services or law enforcement of a life-threatening medical emergency occurring on the licensee’s premises; authorizing sanctions against licensees’ failing to notify such personnel as required; requiring a licensee to notify the Alcohol Beverage Control Administration within 48 hours of the occurrence of a life-threatening emergency; permitting the commissioner to sanction a licensee for failing to comply with the 48-hour notification requirement; and providing examples of life-threatening medical emergencies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of §11-16-1 et seq. of this code or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:
(1) Revoke the licensee’s license;

(2) Suspend the licensee’s license;

(3) Place the licensee on probationary status for a period not to exceed 12 months; and

(4) Impose a monetary penalty not to exceed $1,000 for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special revenue fund designated the Alcohol Beverage Control Enforcement Fund, which is hereby continued. All moneys collected, received, and deposited in the Alcohol Beverage Control Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, and shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the Alcohol Beverage Control Enforcement Fund in excess of $20,000 shall be transferred to the General Revenue Fund.

(c) In addition to the grounds for revocation, suspension, or other sanction of a license set forth in §60-7-13(a) of this code, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer, or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession, or distribution of narcotics or controlled substances, shall be mandatory grounds for revocation of the licensee’s license for a period of at least one year.
(d) A licensee shall notify, in a timely manner, emergency medical services or law enforcement if a licensee knows, or has reason to know, of a life-threatening medical emergency occurring on the licensed premises. In addition to the grounds for revocation, suspension, or other sanction of a license set forth in this section, the commissioner may, in his or her discretion, revoke, suspend, or otherwise sanction a licensee for failing to comply with the provisions of this subsection.

(e) If a life-threatening medical emergency occurs on a licensee’s private premises requiring notification of emergency medical services or law enforcement under §60-7-13(d) of this code, the licensee shall notify the Alcohol Beverage Control Administration within 48 hours of the emergency’s occurrence. The commissioner may, in his or her discretion, revoke, suspend, or otherwise sanction a licensee for failing to comply with the 48-hour notification requirement.

(f) As used in this section, a life-threatening medical emergency includes, but is not limited to, respiratory distress or cessation of breathing, severe chest pains, shock, uncontrolled bleeding, poisoning, prolonged unconsciousness, overdose, any complaint or observation which indicates significant head or spinal injury, and life-threatening physical injury caused by a crime of violence against the person occupying or emanating from the licensed premises.
AN ACT to amend and reenact §15-5-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the Division of Homeland Security and Emergency Management to contract with or employ individuals and contract for goods for the purpose of emergency response and recovery; and providing requirements for such contracts or employment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


(a) The Office of Emergency Services is continued as the Division of Homeland Security and Emergency Management within the Department of Military Affairs and Public Safety. All of the allied, advisory, affiliated or related entities, and funds associated with the Office of Emergency Services and all its functions, personnel, and property, are transferred to, incorporated in, and administered as a part of the Division of Homeland Security and Emergency Management. Wherever the words “Office of Emergency Services” appear in this code, they shall mean the Division of Homeland Security and Emergency Management.
(b) A Director of the Division of Homeland Security and Emergency Management shall be appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall consider applicants for director who at a minimum: (1) Have at least five years managerial or strategic planning experience; (2) are knowledgeable in matters relating to public safety, homeland security, emergency management and emergency response; and (3) have, at a minimum, a federally issued secret level security clearance or have submitted to or will submit to a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued secret level security clearance.

(c) The director may employ such technical, clerical, stenographic, and other personnel, fix their compensation and make expenditures within the appropriation to the division or from other funds made available for the purpose of providing homeland security and emergency management services to carry out the purpose of this article. Employees of the Division of Homeland Security and Emergency Management shall be members of the state Civil Service System and all appointments of the office, except those required by law to be exempt, shall be a part of the classified service under the Civil Service System: Provided, That the director may employ personnel that are not members of the Civil Service System for purposes provided in §15-5-3(g) of this code.

(d) The director and other personnel of the Division of Homeland Security and Emergency Management shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(e) The director, subject to the direction and control of the Governor through the Secretary of the Department of Military Affairs and Public Safety, shall be the executive head of the Division of Homeland Security and Emergency Management and shall be responsible to the Governor and the Secretary of the Department of Military Affairs and
(f) The director shall have the power to acquire in the name of the state by purchase, lease, or gift, real property and rights or easements necessary or convenient to construct thereon the necessary building or buildings for housing and homeland security and emergency management control center.

(g) The director may, for the purposes of responding to a declared state of emergency or for the recovery from a declared state of emergency following the termination of the declaration, employ personnel or enter into contracts and subcontracts for goods or specialized technical services, subject to the following provisions:

(1) Employee positions shall be contingent on the receipt of the necessary federal and/or state funds.

(2) All employees employed pursuant to this subsection shall be exempt from both the classified services category and the classified exempt services category provided in §29-6-4 of this code.

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.
(4) Employees may participate in the PEIA, PERS, workers’ compensation, unemployment compensation programs, or their equivalents.

(5) The director shall set appropriate salary rates for employees equivalent to a rate commensurate with industry standards.

(6) Contracts may be entered into pursuant to this subsection with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals for specialized technical services at a rate commensurate with industry standards as determined by the director to support specific activities related to the response to or the recovery from a declared state of emergency.

CHAPTER 210

(Com. Sub. for S. B. 404 - By Senators Weld and Cline)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §15-12-2 and §15-12-4 of the Code of West Virginia, 1931, as amended, all relating generally to the sex offender registry; adding required information to be provided to the registry by offenders; and clarifying the duration of registration for qualifying offenders as related to offenses involving perceived minors is life.

Be it enacted by the Legislature 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 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 §15-12-2(d) of this code and according to the internal management rules promulgated by the superintendent under authority of §15-2-25 of this code:

(1) §61-8A-1 et seq. of this code;

(2) §61-8B-1 et seq. of this code, including the provisions of former §61-8B-6 of this code, relating to the offense of sexual assault of a spouse, which was repealed by an act of the Legislature during the 2000 legislative session;

(3) §61-8C-1 et seq. of this code;

(4) §61-8D-5 and §61-8D-6 of this code;

(5) §61-2-14(a) of this code;

(6) §61-8-6, §61-8-7, §61-8-12, and §61-8-13 of this code;

(7) §61-3C-14b of this code, as it relates to violations of those provisions of chapter 61 listed in this subsection; or

(8) §61-14-2, §61-14-5, and §61-14-6 of this code: Provided, That as to §61-14-2 of this code 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 where the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

(d) A person 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) The registrant’s 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” means travel trailer, fold-down camping trailer, and house trailer as those terms are defined in §17A-1-1 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;

(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;

(10) A photocopy of a valid driver’s license or government-issued identification card, including a tribal identification card;

(11) A photocopy of any passport and immigration documents;

(12) A photocopy of any professional licensing information that authorizes the registrant to engage in an occupation or carry out a trade or business; and

(13) Any identifying information, including make, model, serial number, and photograph, regarding any unmanned aerial vehicle owned or operated by a registrant.

(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 §15-12-2(b) of this code, 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 §15-12-2(d) of this code 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 §15-12-2(d) of this code. 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 72 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 subdivision 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 §15-12-2(d) of this code 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 §15-12-2(b) of this code, 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 §15-12-5(b)(2) of this code is to be accessible through the Internet. Information relating to telephone or electronic paging device numbers a registrant has or uses may not 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 §61-8B-3 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 §61-8B-4 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 §61-8B-6 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 §61-8B-7 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.
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.

For the purposes of this article, the term “business days” means days exclusive of Saturdays, Sundays, and legal holidays as defined in §2-2-1 of this code.

§15-12-4. Duration.

(a) A person required to register under the terms of this article shall continue to comply with this section, except during ensuing periods of incarceration or confinement, until:

(1) Ten years have elapsed since the person was released from prison, jail, or a mental health facility or 10 years have elapsed since the person was placed on probation, parole, or supervised or conditional release. The 10-year registration period may not be reduced by the sex offender’s release from probation, parole, or supervised or conditional release; or

(2) For the life of that person, if that person: (A) Has one or more prior convictions or has previously been found not guilty by reason of mental illness, mental retardation, or addiction for any qualifying offense referred to in this article; (B) has been convicted or has been found not guilty by reason of mental illness, mental retardation, or addiction of a qualifying offense as referred to in this article, and upon motion of the prosecuting attorney, the court finds by clear and convincing evidence that the qualifying offense involved multiple victims or multiple violations of the qualifying offense; (C) has been convicted or has been found not guilty by reason of mental illness, mental retardation, or addiction of a sexually violent offense; (D) has been determined pursuant to §15-12-2a of this code to be a sexually violent predator; or (E) has been convicted or has been found not guilty by reason of mental illness, mental...
retardation, or addiction of a qualifying offense as referred to in this article, involving a minor or a person believed or perceived by the registrant to be a minor.

(b) A person whose conviction is overturned for the offense which required him or her to register under this article shall, upon petition to the court, have his or her name removed from the registry.

CHAPTER 211

(Com. Sub. for S. B. 625 - By Senators Gaunch, Maynard, Boso, Clements, Jeffries, Palumbo, Smith, Sypolt and Weld)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5A-3-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-3-8a; to amend and reenact §5H-1-2 of said code; to amend and reenact §7-1-3d of said code; to amend and reenact §16-4C-6 and §16-4C-8 of said code; to amend said code by adding thereto two new sections, designated §16-4C-8a and §16-4C-24; to amend said code by adding thereto a new section, designated §17-2A-8d; to amend said code by adding thereto three new sections, designated §29-3-5e, §29-3-5f, and §29-3-8; to amend and reenact §29-3-12 of said code; and to amend said code by adding thereto a new section, designated §33-3-33b, all relating to creating the West Virginia Volunteer Fire and Rescue Act of 2018; requiring Director of Purchasing Division make facilities and services of the division available to fire departments and companies and certain emergency medical services agencies; authorizing director to provide for implementation by legislative rules or other agreement;
authorizing payment of death benefits to survivors of firefighter, emergency medical services, or law-enforcement provider who dies as a proximate result of the performance of his or her duties; increasing death benefits to be paid; providing for written designation of beneficiary to be made on forms prescribed by State Fire Marshal or Commissioner of the Bureau for Public Health; requiring any county fire prevention units to be formed and recognized under the regulations of the State Fire Commission for local fire departments; increasing authorized reimbursement rate amount; providing exception for incidents or accidents involving hazardous materials or extended search and rescue and water rescue incidents; requiring payment of amounts owed as reimbursement within 75 days; authorizing written agreements between fire department or company and responsible party; permitting fire company or department to proceed to recover costs if payment or agreement not reached within 90 days; authorizing Commissioner of the Bureau for Public Health to establish one or more statewide contracts for equipment and supplies utilized by emergency medical services agencies; requiring statewide contracts be made available to certain emergency medical services agencies; authorizing development of uniform standards for equipment and supplies used by emergency medical services agencies; giving legislative rule-making authority to Commissioner of the Bureau for Public Health to implement provisions; requiring Commissioner of the Bureau for Public Health to recognize and give full credit for all continuing education credits approved or recognized by state or nationally recognized accrediting body; establishing courtesy certification program for certified emergency medical services personnel in states bordering West Virginia; relieving courtesy certification applicants from requirement to comply with state certification standards; authorizing rulemaking to implement courtesy certification program; providing for biennial renewal of courtesy certification; authorizing revocation of courtesy certification under certain conditions; establishing special revenue fund known as Emergency Medical Services Equipment and Training Fund; authorizing
use of fund for grants to equip emergency medical services providers and train emergency medical services personnel; requiring Commissioner of the Bureau for Public Health establish grant program for equipment and training of emergency medical services providers and personnel; setting eligibility and certain priorities for grant program; granting rule-making authority to implement grant program; authorizing Commissioner of Division of Highways enter into reimbursement agreements with certain fire departments for services provided relating to tree or debris removal from state highways and rights-of-way; setting conditions for and defining scope of reimbursement; retaining authority of commissioner to properly remove and dispose of cleared trees, debris, or other obstacles; granting legislative rule-making authority to implement reimbursement program; setting minimum provisions for legislative rule; authorizing State Fire Marshal establish one or more statewide contracts for equipment and supplies utilized by fire companies and departments; requiring statewide contracts be made available to certain fire companies and departments as well as any other agency or subdivision with a need for those equipment or supplies; authorizing development of uniform standards for equipment and supplies used by fire companies and departments; giving legislative rule-making authority to State Fire Commission to implement provisions; establishing courtesy certification program for certified firefighters in states bordering West Virginia to serve as volunteer firefighters; relieving courtesy certification applicants from requirement to comply with state certification standards for volunteer firefighters; authorizing rulemaking to implement courtesy certification program; providing for biennial renewal of courtesy certification; authorizing revocation of courtesy certification under certain conditions; establishing special revenue fund known as Fire Service Equipment and Training Fund; authorizing use of fund for grants to equip volunteer and part-volunteer fire companies and departments and their members, and train volunteer and part-volunteer firefighters; requiring State Fire Marshal establish grant program for equipment and training of volunteer and part-volunteer fire
companies and departments and volunteer firefighters; setting eligibility and certain factors for State Fire Marshal to consider in making grants; granting rule-making authority to implement grant program; requiring State Fire Marshal prepare certain reports and make certain recommendations; requiring study and report from Insurance Commissioner regarding issues related to workers’ compensation for volunteer and part-volunteer fire departments; eliminating obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-8. Facilities of division available to local governmental bodies.

The director shall make available the facilities and services of his or her division to counties, county schools, municipalities, urban mass transportation authorities, created pursuant to §8-27-1 et seq. of this code, mass transportation divisions of county and municipal governments, fire departments, and other local governmental bodies within this state. The actual expenses incurred thereby shall be paid by the local governmental body.

§5A-3-8a. Facilities of division available to volunteer fire departments and emergency medical services.

The director shall make available the facilities and services of his or her division to fire departments and companies, including volunteer and part-volunteer departments and companies, as well as to emergency medical services agencies that are designated to provide emergency response by one or more county emergency dispatch centers. The director shall provide, whether by legislative rule proposed pursuant to §29-3-1 et seq. of this code or other agreement entered into between the director
and another governmental body or agency of the state, for the implementation of this section.

CHAPTER 5H. SURVIVOR BENEFITS.

ARTICLE 1. WEST VIRGINIA FIRE, EMS, AND LAW-ENFORCEMENT OFFICER SURVIVOR BENEFIT ACT.

§5H-1-2. Death benefit for survivors.

(a) In the event a firefighter, EMS, or law-enforcement provider dies as a proximate result of the performance of, his or her duties, the department chief, within 30 days from the date of death shall submit certification of the death to the Governor’s Office.

(b) This act includes both paid and volunteer fire, EMS, and law-enforcement personnel acting in the performance of his or her duties of any fire, EMS, or law-enforcement department certified by the State of West Virginia.

(c) A firefighter, EMS, or law-enforcement provider is considered to be acting in the performance of his or her duties for the purposes of this act when he or she is participating in any role of a fire, EMS, or law-enforcement department function. This includes training, administration meetings, fire, EMS, or law-enforcement incidents, service calls, apparatus, equipment or station maintenance, fundraisers, and travel to or from such functions.

(d) Travel includes riding upon or in any apparatus or vehicle which is owned or used by the fire, EMS, or law-enforcement department, or any other vehicle going to or directly returning from a firefighter’s home, place of business, or other place where he or she shall have been prior to participating in a fire, EMS, or law-enforcement department function, or upon the authorization of the chief of the department, agency head, or other person in charge.

(e) Certification shall include the name of the certified fire, EMS, or law-enforcement program, the name of the
deceased firefighter, EMS, or law-enforcement provider, 
the name and address of the beneficiary, any documentation 
designating a beneficiary or beneficiaries, and setting forth 
the circumstances that qualify the deceased individual for 
death benefits under this act. Upon receipt of the 
certification from the certified fire, EMS, or law-
enforcement program, the state shall, from moneys from the 
State Treasury, General Fund, pay to the certified fire, EMS, 
or law-enforcement program the sum of $100,000 in the 
name of the beneficiary of the death benefit. Within five 
days of receipt of this sum from the state, the fire, EMS, or 
law-enforcement program certified by the state shall pay the 
sum as a benefit to the surviving spouse or designated 
beneficiary. If there is no surviving spouse or designated 
beneficiary, then to the minor children of the firefighter, 
EMS, or law-enforcement provider who died as a proximate 
result of the performance of his or her duties. When no 
spouse, designated beneficiary, or minor children survive, 
the benefit shall be paid to the parent or parents of the 
firefighter, EMS, or law-enforcement provider. It is the 
responsibility of the certified fire or EMS program to 
document the surviving spouse or beneficiary for purposes 
of reporting to the Governor’s Office.

(f) Any death ruled by a physician to be a result of an 
injury sustained during any of the above mentioned 
performance of fire department, EMS, or law-enforcement 
duties will be eligible for this benefit, even if this death 
occurs at a later time.

(g) Those individuals who are covered by this article are 
eligible for only one death benefit payment.

(h) Every department or agency head employing 
persons to which this article applies shall provide notice of 
the benefit provided hereby to such employees and 
encourage covered employees to provide a written 
designation of beneficiary to be maintained in the 
employee’s personnel file.
(i) Any person making application for certification as a firefighter to which this section applies shall provide a written designation of beneficiary using forms and procedures prescribed by the State Fire Marshal. Any person making application for emergency medical services personnel certification to which this section applies shall provide a written designation of beneficiary using forms and procedures prescribed by the Commissioner of the Bureau for Public Health.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3d. Levy for, establishment, and operation of fire prevention units; financial aid.

(a) The county commission in any county may:

(1) Levy for and erect, maintain, and operate fire stations; and

(2) Form county fire prevention units, and supply equipment therefor in the county: Provided, That if a county commission establishes a separate county fire prevention unit in any city in West Virginia that is now operating under the provisions of the state civil service act for paid fire departments, then the new unit shall be operated in accordance with the provisions of the civil service act. Any such unit shall be formed and recognized under the regulations of the State Fire Commission for local fire departments.

(b) Any county commission may render financial aid to any one or more public fire protection facilities in operation in the county for the general benefit of the public in the prevention of fires.

(c) Any county commission may also authorize volunteer fire companies or paid fire departments to charge reasonable reimbursement fees for personnel and equipment
used in performing firefighting services, victim rescue, or cleanup of debris or hazardous materials by department personnel.

(1) The rate for any such fees to be charged to property owners or other persons responsible or liable for payment for such services must be approved by the county commission and must be reasonable: Provided, That no fee for any single incident or accident shall exceed $1,500, except that the fee for an incident or accident involving hazardous materials or extended search and rescue and water rescue incidents may exceed this amount based on the necessary and reasonable costs incurred.

(2) The county commission shall require that any fees charged pursuant to the authority conferred by this section must be in writing and be itemized by specific services rendered and the rate for each service.

(3) Unless exempt by law, any person, partnership, corporation, or governmental agency shall be fully responsible for all charges levied by this section within 75 days of the date of the response resulting in such charge. Payment to the fire department or company rendering the services shall be in full, unless a written agreement has been reached between the fire department or company and the responsible party to establish a payment schedule to satisfy all charges.

(4) If payment for services rendered has not been received within 90 days from the date of response, and if a payment schedule has not been established, a fire department or company may proceed in magistrate court or in other appropriate court action to recover from the responsible party all fees associated with the response, including attorney fees and court costs.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.
§16-4C-6. Powers and duties of commissioner.

The commissioner has the following powers and duties:

(a) To propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code: Provided, That the rules have been submitted at least 30 days in advance for review by the Emergency Medical Services Advisory Council, who may act only in the presence of a quorum. The rules may include:

(1) Standards and requirements for certification and recertification of emergency medical service personnel, including, but not limited to:

(A) Age, training, testing, and continuing education;

(B) Procedures for certification and recertification, and for denying, suspending, revoking, reinstating, and limiting a certification or recertification;

(C) Levels of certification and the scopes of practice for each level;

(D) Standards of conduct; and

(E) Causes for disciplinary action and sanctions which may be imposed.

(2) Standards and requirements for licensure and licensure renewals of emergency medical service agencies, including:

(A) Operational standards, levels of service, personnel qualifications and training, communications, public access, records management, reporting requirements, medical direction, quality assurance and review, and other requirements necessary for safe and efficient operation;

(B) Inspection standards and establishment of improvement periods to ensure maintenance of the standards;
(C) Fee schedules for licensure, renewal of licensure, and other necessary costs;

(D) Procedures for denying, suspending, revoking, reinstating, or limiting an agency licensure;

(E) Causes for disciplinary action against agencies; and

(F) Administrative penalties, fines, and other disciplinary sanctions which may be imposed on agencies;

(3) Standards and requirements for emergency medical services vehicles, including classifications and specifications;

(4) Standards and requirements for training institutions, including approval or accreditation of sponsors of continuing education, course curricula, and personnel;

(5) Standards and requirements for a State Medical Direction System, including qualifications for a state emergency medical services medical director and regional medical directors, the establishment of a State Medical Policy and Care Committee, and the designation of regional medical command centers;

(6) Provision of services by emergency medical services personnel in hospital emergency rooms;

(7) Authorization to temporarily suspend the certification of an individual emergency medical services provider prior to a hearing or notice if the commissioner finds there is probable cause that the conduct or continued service or practice of any individual certificate holder has or may create a danger to public health or safety: Provided, That the commissioner may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification; and
(8) Any other rules necessary to carry out the provisions of this article;

(b) To apply for, receive, and expend advances, grants, contributions, and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article;

(c) To design, develop, and review a Statewide Emergency Medical Services Implementation Plan. The plan shall recommend aid and assistance and all other acts necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county, and community officials, and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state;

(d) To provide professional and technical assistance and to make information available to regional emergency medical services boards of directors and other potential applicants or program sponsors of emergency medical services for purposes of developing and maintaining a statewide system of services;

(e) To assist local government agencies, regional emergency medical services boards of directors, and other public or private entities in obtaining federal, state, or other available funds and services;

(f) To cooperate and work with federal, state, and local governmental agencies, private organizations, and other entities as may be necessary to carry out the purposes of this article;

(g) To acquire in the name of the state by grant, purchase, gift, devise, or any other methods appropriate,
real and personal property as may be reasonable and necessary to carry out the purposes of this article;

(h) To make grants and allocations of funds and property so acquired or which may have been appropriated to the agency to other agencies of state and local government as may be appropriate to carry out the purposes of this article;

(i) To expend and distribute by grant or bailment funds and property to all state and local agencies for the purpose of performing the duties and responsibilities of the agency all funds which it may have so acquired or which may have been appropriated by the Legislature of this state;

(j) To develop a program to inform the public concerning emergency medical services;

(k) To review and disseminate information regarding federal grant assistance relating to emergency medical services;

(l) To prepare and submit to the Governor and Legislature recommendations for legislation in the area of emergency medical services;

(m) To review, make recommendations for, and assist in all projects and programs that provide for emergency medical services whether or not the projects or programs are funded through the Office of Emergency Medical Services. A review and approval shall be required for all emergency medical services projects, programs, or services for which application is made to receive state or federal funds for their operation after the effective date of this act;

(n) To cooperate with the Department of Administration, Purchasing Division to establish one or more statewide contracts for equipment and supplies utilized by emergency medical services agencies in accordance with §5A-3-1 et seq. of this code:
(1) Any statewide contract established hereunder shall be made available to any emergency medical services agency licensed under §16-4C-6a of this code that is designated to provide emergency response by one or more county emergency dispatch centers.

(2) The office may develop uniform standards for equipment and supplies used by emergency medical services agencies in accordance with §5A-3-1 et seq. of this code.

(3) The office shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this subsection; and

(o) To take all necessary and appropriate action to encourage and foster the cooperation of all emergency medical service providers and facilities within this state.

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

(a) Every ambulance operated by an emergency medical services agency shall carry at least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first aid and the person in the patient compartment shall be certified as an emergency medical technician-basic at a minimum except that in the case of a specialized multipatient medical transport, only one staff person is required and that person shall be certified, at a minimum, at the level of an emergency medical technician-basic. The requirements of this subsection will remain in effect until revised by the legislative rule to be promulgated pursuant to §16-4C-8(b) of this code.

(b) On or before May 28, 2010, the commissioner shall submit a proposed legislative rule to the Emergency Medical Services Advisory Council for review, and on or before June 30, 2010, shall file the proposed legislative rule with the Office of the Secretary of State, in accordance with the provisions of §29A-3-1 et seq. of this code, to establish certification standards for emergency medical vehicle
operators and to revise the requirements for emergency medical services personnel.

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

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

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

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

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

(3) The applicant shall submit a fee of $75 for initial certification and a fee of $50 for recertification. The fees set forth in this subsection remain in effect until modified by legislative rule.

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

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

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

(i) For purposes of certification or recertification of emergency medical services personnel, the commissioner shall recognize and give full credit for all continuing education credits that have been approved or recognized by any state or nationally recognized accrediting body.

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

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

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

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

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

(3) Submits any required fee.

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

(d) The Commissioner of the Bureau for Public Health shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement the provisions of this section.

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

(f) Any courtesy certification issued pursuant to this section must be renewed biennially.
§16-4C-24. Emergency Medical Services Equipment and Training Fund; establishment of grant program for equipment and training of emergency medical service providers and personnel.

(a) There is hereby created in the State Treasury a special revenue fund to be known as the Emergency Medical Services Equipment and Training Fund. Expenditures from the fund by the Office of Emergency Medical Services, Bureau for Public Health, Department of Health and Human Resources are authorized from collections. The fund may only be used for the purpose of providing grants to equip emergency medical services providers and train emergency medical services personnel, as defined in §16-4C-3 of this code. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund but remains in the special revenue fund.

(b) The Commissioner of the Bureau for Public Health shall establish a grant program for equipment and training of emergency medical services providers and personnel. Such grant program shall be open to all emergency medical services personnel and providers, but priority shall be given to rural and volunteer emergency medical services providers.

(c) The Commissioner of the Bureau for Public Health shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to implement the grant program established pursuant to this section.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8d. Reimbursement for volunteer fire departments.
(a) In addition to the other powers given and assigned to him or her in this chapter, the Commissioner of the Division of Highways may enter into reimbursement agreements, based upon reasonable actual costs incurred, with volunteer or part-volunteer fire departments for services provided by volunteer or part-volunteer fire departments relating to tree or debris removal from state highways and rights-of-way when the commissioner requests such services.

(b) A volunteer or part-volunteer fire department may be reimbursed without a prior request by the commissioner when the traveled way of a state highway is obstructed by a fallen tree or other debris and the volunteer or part-volunteer fire department is the first responder: Provided, That the volunteer or part-volunteer fire department subsequently enters into a reimbursement agreement with the commissioner to recoup only the costs actually incurred to clear the traveled way of the state highway to permit the public to safely travel upon it.

(c) The commissioner shall retain authority to properly remove and dispose of any cleared trees, debris, or other obstructions cleared from the traveled way by a volunteer or part-volunteer fire department, and the commissioner shall not reimburse a volunteer or part-volunteer fire department for any final disposal of any cleared debris or obstruction.

(d) The commissioner shall not reimburse a volunteer or part-volunteer fire department for services contracted out by the volunteer or part-volunteer fire department.

(e) The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to effectuate the purposes of the section. Any rule promulgated pursuant to this section shall include provisions establishing minimum reporting, auditing, and other necessary documentation requirements to approve reimbursement requests submitted to the commissioner.
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5e. Courtesy certification of firefighters in surrounding states to serve as volunteer firefighter.

(a) It is the intention of the Legislature to permit individuals who have been certified as professional or volunteer firefighters in a state bordering West Virginia to serve as volunteer firefighters in West Virginia.

(b) Beginning July 1, 2018, the State Fire Marshal shall establish a process by which a courtesy certification to serve as a volunteer firefighter in this state may be issued to any person who satisfies the following requirements:

(1) Is a certified professional or volunteer firefighter in good standing in a state bordering West Virginia;

(2) Complies with the application process and procedures established by the State Fire Marshal; and

(3) Submits any required fee.

(c) Issuance of a courtesy certification shall not be withheld by the State Fire Marshal based on an individual’s failure to satisfy the training requirements for volunteer firefighters set forth in legislative rules promulgated pursuant to §29-3-5d of this code.

(d) The State Fire Marshal shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement the provisions of this section.

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

§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant.

(a) There is hereby created in the State Treasury a special revenue fund to be known as the Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Marshal are authorized from collections. The fund may only be used for the purpose of providing grants to equip volunteer and part-volunteer fire companies and departments and their members, and train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund but remains in the Special Revenue Fund. The State Fire Marshal shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to implement the grant program established pursuant to this section.

(b) The State Fire Marshal shall establish a grant program for equipment and training for volunteer and part-volunteer fire companies and departments. Such grant program shall be open to all volunteer and part-volunteer fire companies and departments. In making grants pursuant to this section, the State Fire Marshal shall consider:

(1) The number of emergency and nonemergency calls responded to by the department;

(2) The activities and responses of the department;

(3) The revenues received by the department from federal, state, county, municipal, local, and other sources; and

(4) The department’s assets, expenditures, and other liabilities, including whether the fire company or department has availed itself of available statewide contracts.
(c) The State Fire Commission shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to implement the grant program established pursuant to this section.


(a) On or before July 1, 2019, the State Fire Marshal shall submit a comprehensive report to the Joint Committee on Government and Finance containing a recommended plan for transferring authority and responsibility for providing fire services to the counties. Such report shall include, but not be limited to, recommendations regarding recommended state oversight of such fire services; financial support for fire services, a plan and timeline for transitioning responsibility and oversight to the counties; and county authority, oversight, and accountability of operations, fiscal planning, financial accountability, and risk management planning. The State Fire Marshal shall solicit input from appropriate state agencies, county officials, and other interested parties, which shall provide requested information to the State Fire Marshal to assist in preparation of the report and recommendation.

(b) On or before July 1, 2019, the State Fire Marshal shall study, prepare, and submit a report to the Joint Committee on Government and Finance regarding reciprocity of firefighter and fire officer certification with other states. Such report shall include recommendations regarding ways to increase availability of reciprocal certification, including any necessary changes to state code or regulation necessary to facilitate additional reciprocity.

§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 §29-3-11 of this code and any person deputized pursuant to §29-3-12(j) of this code 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 §29-3-12b(A)(1) of this code or of §29-3B-1 et seq. of this code.

(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: 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
(g) **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) **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 §29-3-11 of this code is hereby authorized and empowered and any person deputized pursuant to §29-3-11 of this code 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 §61-3-1 et seq. of this code or of the explosives-related offenses of §61-3e-1 et seq. of said code: *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 §61-3-1 et seq. of this code or of the explosives-related offenses of §61-3e-1 et seq. of this code. 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 §61-3-1 et seq. of this code or of the explosives-related offenses of §61-3e-1 et seq. of said code. 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 10 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 §29-3B-1 et seq. of this code: Provided, That unless otherwise provided, the State Fire Marshall shall take final action upon any completed permit applications within 30 days of receipt if the application is uncontested, or within 90 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 §29-3-24 of this code, 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 §29-3-11 of this code are hereby authorized, and any person deputized pursuant to §29-3-12(j) of this code 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 §29-3-1 et seq. of this code: Provided, That a summary report of all citations issued pursuant to this section by persons deputized under §29-3-12(j) of this code 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 §29-3-12(j) of this code 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 §29-3-12(j) of this code 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 §29-3-12(j) of this code 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) Statewide contracts. — The State Fire Marshal may cooperate with the Department of Administration, Purchasing Division, to establish one or more statewide contracts for equipment and supplies utilized by fire companies and departments in accordance with §5A-3-1 et seq. of this code.

(1) Any statewide contract established hereunder shall be made available to any fire company and department in this state, as well as any other state agency or political subdivision that has a need for the equipment or supplies included in those contracts.

(2) The State Fire Marshal may develop uniform standards for equipment and supplies used by fire companies and departments in accordance with §5A-3-1 et seq. of this code.

(3) The State Fire Commission shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this subsection.
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 90 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.

CHAPTER 33. INSURANCE

ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURERS.

§33-3-33b. Report regarding volunteer firefighter workers’ compensation coverage.

(a) The Insurance Commissioner, in consultation with the State Fire Marshal, the State Auditor, the Legislative Auditor, and the Board of Risk and Insurance Management, shall study the feasibility of combining the volunteer fire departments in our state under a single policy for workers’ compensation coverage, self-insuring workers’ compensation coverage for volunteer fire departments, or other workers’ compensation coverage options. Such study shall also include an evaluation of the benefit, necessity, and feasibility of expanding the current scope of workers’ compensation coverage for volunteers, including, but not limited to, presumptions for cardiovascular or pulmonary disease, occupational pneumoconiosis, or other occupational disease, as well as a comparison of those proposals to other means of supplementing workers’ compensation insurance through secondary insurance policies.

(b) On or before July 1, 2019, the Insurance Commissioner shall submit to the Joint Committee on Government and Finance and the Joint Committee on Government Organization a comprehensive report of the review and the Insurance Commissioner’s
recommendations, substantiated by the findings of the
review, and steps that may be taken to meet the needs of and
sustain the volunteer fire departments for their workers’
compensation coverage.

CHAPTER 212

(H. B. 2869 - By Mr. Speaker (Mr. Armstead))

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §15-5-15b,
relating to providing that certain state employees may be
granted a leave of absence with pay while providing assistance
as an essential member of an emergency aid provider during
a declared state of emergency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND
EMERGENCY MANAGEMENT.

§15-5-15b. Paid leave for certain state officers and employees
during a declared state of emergency.

(a) Any state employee who is designated an essential
member of an emergency aid provider may be granted leave
from his or her state employment with pay, for not more
than fifteen work days in each year, to provide disaster relief
or emergency services in areas of the state in which a state
of emergency has been declared. Leave shall be granted
under this section upon: (1) Designation of the employee as
an essential member by the chief executive officer or other
officer or agent of the emergency aid provider who has
authority to act on its behalf; and (2) approval of that
employee’s immediate supervisor. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority or compensatory time. The state shall compensate an employee granted leave under this section at the employee’s regular rate of pay for those regular work hours during which the employee is absent from his or her state employment. Any supervisor granting leave to an employee for purposes of participating in disaster relief or emergency services pursuant to this section shall make a report to the Governor which includes the name of the employee and the total cost, if any, to the employing agency attributable to the temporary replacement of the employee granted leave in the circumstance where replacement is necessary. The Governor shall keep a record of the total cost reported and in no event may the total cost for all state agencies exceed $300,000: Provided, That upon approval of the Governor and repayment of the cost to the employing agency, from the Civil Contingent Fund, leave may be granted in an excess of a total cost of $300,000.

(b) Notwithstanding the provisions of this section to the contrary, no person may be designated an essential member of an emergency aid provider for purposes of this section, if the person is employed by an emergency aid provider located in or that customarily serves an area included within the state of emergency.

(c) As used in this section:

(1) “Emergency aid provider” means a local organization for emergency services as defined by section two, article five, chapter fifteen of this code or a volunteer fire department that is providing emergency services during a state of emergency as a result of the circumstances that resulted in the declaration of the state of emergency;

(2) “Essential member” means a person designated by an emergency aid provider whose services are needed to provide emergency services due to the circumstances that resulted in the declaration of the state of emergency;
“State of emergency” means the situation existing after the occurrence of a disaster or circumstance in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of section six of this article or in which a major disaster declaration or emergency declaration has been issued by the President of the United States.

CHAPTER 213


[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-14-15a, relating to allowing military veterans with certain military ratings to qualify for examinations required of a probationary police officer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-15a. Veteran qualification for examinations required during probation period.

(a) Any person who has served on active duty in the Armed Forces of the United States, was honorably
discharged from that service, and who has successfully completed the course of instruction required to qualify him or her for rating as a military police officer, law-enforcement specialist or other equivalent rating in his or her particular branch of the Armed Forces, may submit to the Civil Service Commission a photostatic copy of the certificate issued to him or her certifying successful completion of such course of instruction and a photostatic copy of his or her discharge from the Armed Forces. The Civil Service Commission shall allow, upon request of the veteran, that he or she be permitted to take any examinations required during the probationary period without first having to complete a training course for that subject: Provided, That if the veteran does not pass the examination or examinations, he or she may be subject to the same reexamination requirements of persons who have not applied under the provisions of this section.

(b) A veteran wishing to utilize the provisions of section (a) must have first met the requirements contained in §8-14-12 and §8-14-13 of this code.

(c) The veteran must successfully pass all examinations and any other requirements of his or her probation period, to be eligible for absolute appointment.

CHAPTER 214

(Com. Sub. for H. B. 2916 - By Delegates Pethtel, Hanshaw and Lovejoy)

[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ATTORNEY GENERAL.

§5-3-6. Attorney General’s investigators authority to carry concealed weapon.

(a) The Attorney General may allow, consistent with the provisions of this section, an investigator to carry a concealed firearm while performing his or her official duties.

(b) An investigator employed by the Attorney General may carry a concealed firearm approved by the Attorney General solely for purposes of defense of self or others if the investigator has:

   (1) Obtained the written authorization by the Attorney General;
(2) Been determined not to be prohibited from possessing a firearm under state or federal law;

(3) Obtained and maintains a concealed handgun license pursuant to §61-7-1 et seq. of this code; and

(4) Successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The investigator must thereafter successfully complete an annual firearms qualification counsel equivalent to that required of certified law-enforcement officers as established by legislative rule. The Attorney General may reimburse the investigator for the cost of the training and requalification.

(c) Neither the state, a political subdivision, an agency nor an employee of the state acting in an official capacity, may be held personally liable for an act of an investigator employed by the Attorney General if the act or omission was done in good faith while the investigator was performing official duties or responsibilities under the office of the Attorney General.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1a. Deputy sheriff’s reserve; purpose; appointment and qualifications of members; duties; equipment; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

(a) The sheriff of any county may, for the purposes set forth in this section, designate and appoint a deputy sheriff’s reserve, hereinafter referred to as “reserve” or “reserves.” A reserve may not be designated or created without the prior approval of the county commission for the establishment of the reserve.
(b) Each sheriff may appoint as members of the reserveona fide citizens of the county who are of good moral
character and who have not been convicted of a felony or
other crime involving moral turpitude. Any person
appointed shall serve at the will and pleasure of the sheriff
and is not subject to the provisions of §7-14-1 et seq. of this
code. A member of the reserve may not engage in any
political activity or campaign involving the office of sheriff
or from which activity or campaign the sheriff or candidates
for sheriff appointing the member would directly benefit.

(c) Members of the reserves shall not serve as law-
enforcement officers, nor carry firearms, except that a
member of the reserves may carry a firearm approved by the
sheriff while acting in the capacity as a reserve deputy
sheriff solely for purpose of defense of self or others, if that
member has:

1. Obtained the written authorization of the sheriff;
2. Been determined not to be prohibited from
possessing a firearm under state or federal law; and
3. Successfully completed a firearms training and
certification program equivalent to that provided to officers
attending the entry level law-enforcement certification
course provided at the West Virginia State Police Academy.
The member must thereafter successfully complete an
annual firearms qualification course equivalent to that
required of certified law-enforcement officers as established
by legislative rule. The department may reimburse the
member for the cost of the training and requalification.

Members may carry other weapons, provided that the
sheriff certifies in writing to the county commission that the
reserve has met the special training requirements for the
weapon as established by the Governor’s Committee on
Crime, Delinquency and Corrections. The Governor’s
Committee on Crime, Delinquency and Corrections may
propose legislative rules for promulgation and emergency
rules pursuant to the provisions of §29A-3-1 et seq. of this code to establish appropriate training standards. The reserves may be provided with radio communication equipment for the purpose of maintaining contact with the sheriff’s department or other law-enforcement agencies. The duties of the reserves shall be limited to crowd control or traffic control and direction within the county. In addition, the reserves may perform any other duties of a nonlaw-enforcement nature designated by the sheriff or by a deputy sheriff designated and appointed by the sheriff for that purpose: Provided, That a member of the reserves may not aid or assist any law-enforcement officer in enforcing the statutes and laws of this state in any labor trouble or dispute between employer and employee.

(d) Members of the reserves may be uniformed; however, if uniformed, the uniforms shall clearly differentiate these members from other law-enforcement deputy sheriffs.

(e) After appointment to the reserves, but prior to service each member of the reserves shall receive appropriate training and instruction in his or her functions and authority as well as the limitations of authority. In addition, each member of the reserves shall annually receive in-service training.

(f) Each member of the reserve shall take the same oath as prescribed by section five, article IV of the Constitution of the State of West Virginia, but the taking of the oath does not serve to make the member a public officer.

(g) The county commission of each county shall provide for the bonding and liability insurance of each member of the reserve.

(h) A member of the reserve is not an employee of either the sheriff or of the county commission for any purpose or purposes, including, but not limited to, the purposes of workers’ compensation, civil service, unemployment
compensation, public employees retirement, public employees insurance, or for any other purpose. A member of the reserves may not receive any compensation or pay for any services performed as a member, nor may a member use the designated uniform for any other similar work performed.

(i) Neither the county commission nor the sheriff is liable for any of the acts of any member of the reserves except in the case of gross negligence on the part of the county commission or sheriff in the appointment of the member or in the case of gross negligence on the part of either the sheriff or any of his or her deputies in directing any action on the part of the member.

CHAPTER 215

(Com. Sub. for H. B. 4138 - By Delegates Byrd, Fluharty, Lane, R. Miller, Phillips, Fleischauer, Moore, Lovejoy, Blair, Canestraro and Robinson)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29-3-16a of the Code of West Virginia, 1931, as amended, relating to requiring each public or private school and daycare center that uses a fuel-burning heating system or other fuel-burning heating device that emits combustion gases to install carbon monoxide detectors in certain locations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.
An operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in §21-9-2(j) of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the current edition of the National Fire Protection Association Standard 72, "Standard for the Installation, Maintenance, and Use of Household Fire Warning Equipment" and in the manufacturer’s specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

The owner of each dwelling described in subsection (a) of this section shall provide, install, and replace the operational smoke detectors required by this section. To assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner of the dwelling, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

An automatic fire sprinkler system installed in accordance with the current edition of the National Fire Protection Association Standard 13D, “Standard for the Installation of Sprinkler Systems in Residential Occupancies” may be provided in lieu of smoke detectors.

After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.
(f) An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly into an electrical outlet that is not controlled by a switch or hardwired into an alternating current (AC) electrical source, with battery backup, shall be installed, maintained, tested, repaired, or replaced, if necessary, in accordance with the manufacturer’s direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove;

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed, or barn, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove;

(3) Effective September 1, 2012, in either a common area where the general public has access or all rooms in which a person will be sleeping that are adjoining to and directly below and above all areas or rooms that contain permanently installed fuel-burning appliances and equipment that emit carbon monoxide as a byproduct of combustion located within all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels and motels.

(g) Effective January 1, 2013, all single station carbon monoxide detectors with a suitable alarm or a combination smoke detector and carbon monoxide detectors shall be hardwired into an alternating current (AC) electrical source, with battery backup, when installed in all newly constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels and motels.
(h) In any long-term care facility that is staffed on a twenty-four hour, seven day a week basis, the single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector is only required to be installed in an area of the facility that permits the detector to be audible to the staff on duty.

(i) Effective January 1, 2019, carbon monoxide detectors shall be installed in every public or private school or daycare facility that uses a fuel-burning heating system or other fuel-burning device that produces combustion gases. A carbon monoxide detector shall be located in each area with a fuel-burning heating system or other fuel-burning device that produces combustion gases.

(j) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor, or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the installed carbon monoxide detector.

(k) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor, or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(l) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined $250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2000.

(m) A violation of this section may not be considered to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.
(n) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(o) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair, and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

CHAPTER 216

(Com. Sub. for H. B. 4169 - By Delegates Barrett, Shott, Overington, Moore, Kessinger, Lane, Queen, Upson, Lovejoy, Canestraro and R. Miller)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-9A-4, relating to requiring certain businesses and establishments to post human trafficking assistance notices; establishing where notices must be posted and contents of notice; requiring the Director of the Division of Justice and Community Services to provide certain resources for giving notice on the Division’s website; authorizing certain state and local agents to give notice of violations; providing for criminal penalties for failure to comply with posting of notices once given notice of lawful duty to post; and defining terms.

Be it enacted by the Legislature of West Virginia:
ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.


(a) For the purpose of assisting victims of human trafficking to obtain help and services, the following businesses and establishments shall post a notice meeting the requirements of this section:

1. All locations licensed by the Alcohol Beverage Control Commission to allow consumption of alcoholic beverages, pursuant to chapter 60 of this code;
2. Exotic entertainment facilities, as defined by §60-4-23 of this code;
3. Primary airports;
4. Passenger rail stations;
5. Bus stations;
6. Locations where gasoline and diesel fuel are sold;
7. Emergency departments within hospitals;
8. Urgent care centers;
9. Locations at which farm labor contractors and day haulers work, if a physical facility is available at those locations upon or in which notice can be posted;
10. Privately operated job recruitment centers;
11. Rest areas located along interstate highways in this state, operated by the Division of Highways;
12. Hotels; and
13. Any other business or establishment that the director determines, by legislative rule, is an effective location to provide notice to victims of human trafficking.
(b) Requirements for posting of notice. – The notice required by this section must be posted in English, Spanish, and any other language determined by legislative rule by the director. The notice must be posted in each public restroom for the business or establishment, and either in a conspicuous place near the public entrance of the business or establishment or in another location in clear view of the public and employees, where similar notices are customarily posted.

(c) The director shall provide hyperlinks on the division’s website to downloadable posters that are eight and one-half inches by 11 inches in size that provide information regarding the National Human Trafficking Resource Center and display the telephone number for the National Human Trafficking Resource Center hotline. These downloadable posters must be available in English, Spanish, and any other language determined by legislative rule by the director. These downloadable posters, if printed and posted, will satisfy the posting requirements of this section.

(d) Any law-enforcement officer, representative of the state health department or of a county health department, representative of the State Alcoholic Beverage Control Commission, representative of the Division of Labor, or other state representative inspecting a business or establishment or otherwise lawfully acting under his or her state authority, may notify, in writing, any business or establishment that it has failed to comply with the requirements of this section. If the business or establishment does not correct the violation within 30 days from the date of receipt of such written notice, the owner shall be charged with a violation of this section and upon conviction, is guilty of a misdemeanor offense and may be punished by a fine of not more than $250. Upon a second or subsequent conviction, the owner is guilty of a misdemeanor and shall be punished by a fine of not more than $500. The notice required by this subsection must be delivered to the noncomplying business or establishment by certified mail, with return receipt requested.
(e) For the purposes of this section, and unless a different meaning is plainly required:

(1) “Day hauler” means any person who is employed by a farm labor contractor to transport, or who, for a fee, transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person; provided, That such term shall not include a person engaged in the production of agricultural products;

(2) “Farm labor contractor” means any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons; provided, That such term shall not include a person engaged in the production of agricultural products;

(3) “Hospital” shall have the same meaning as set forth in §16-2D-2(21) of this code.

(4) “Hotel” means any establishment which offers overnight accommodations to the public in exchange for a monetary payment;

(5) “Primary airport” shall have the same meaning as set forth in 49 U.S.C. § 47102(16); and

(6) “Production of agricultural products” means raising, growing, harvesting, or storing of crops; feeding, breeding, or managing livestock, equine, or poultry; producing or storing feed for use in the production of livestock.
AN ACT to amend and reenact §15-2D-2 and §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to the law-enforcement authority of the director and officers of the division of protective services; exempting certain safety and security information from disclosure under the West Virginia Freedom of Information Act; and clarifying that agencies installing electronic security systems designed to connect with the division’s command center must be approved prior to installation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-2. Division established; purpose; appointment and qualifications of director.

(a) The state facilities protection division within the Department of Military Affairs and Public Safety shall hereafter be designated the Division of Protective Services. The purpose of the division is to provide safety and security at the capitol complex and other state facilities: Provided, That nothing in this section shall be construed as limiting the law-enforcement authority of the division set forth in §15-2d-3 of this code.

(b) The Governor shall appoint, with the advice and consent of the Senate, the director of the division whose qualifications shall include at least 10 years of service as a
law-enforcement officer with at least three years in a supervisory law-enforcement position, the successful completion of supervisory and management training, and the professional training required for police officers at the West Virginia state police academy or an equivalent professional law-enforcement training at another state, federal or United States Military institution.

§15-2D-3. Duties and powers of the director and officers.

(a) The director is responsible for the control and supervision of the division. The director and any officer of the division specified by the director may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha County as members of the West Virginia State Police as set forth in §15-2-12(b) and §15-2-12(d) of this code. The director and designated officers shall also have such powers throughout the State of West Virginia in investigating and performing law-enforcement duties for offenses committed on the Capitol Complex or related to the division’s security and protection duties at the Capitol Complex and throughout the state relating to offenses and activities occurring on any property owned, leased or operated by the State of West Virginia when undertaken at the request of the agency occupying the property: Provided, That nothing in this article shall be construed as to obligate the director or the division to provide or be responsible for providing security at state facilities outside the Capitol Complex.

(b) Any officer of the division shall be certified as a law-enforcement officer by the Governor’s Committee on Crime, Delinquency and Correction or may be conditionally employed as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this code.

(c) The director may:

(1) Employ necessary personnel, all of whom shall be classified exempt, assign them the duties necessary for the
efficient management and operation of the division and specify members who may carry, without license, weapons designated by the director;

(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain security at the Capitol Complex and other state facilities as may be determined by the Secretary of the Department of Military Affairs and Public Safety;

(4) Establish and provide standard uniforms, arms, weapons and other enforcement equipment authorized for use by members of the division and shall provide for the periodic inspection of the uniforms and equipment. All uniforms, arms, weapons and other property furnished to members of the division by the State of West Virginia is and remains the property of the state;

(5) Appoint security officers to provide security on premises owned or leased by the State of West Virginia;

(6) Upon request by the Superintendent of the West Virginia State Police, provide security for the Speaker of the West Virginia House of Delegates, the President of the West Virginia Senate, the Governor or a justice of the West Virginia Supreme Court of Appeals;

(7) Gather information from a broad base of employees at and visitors to the Capitol Complex to determine their security needs and develop a comprehensive plan to maintain and improve security at the Capitol Complex based upon those needs; and

(8) Assess safety and security needs and make recommendations for safety and security at any proposed or existing state facility as determined by the Secretary of the Department of Military Affairs and Public Safety, upon request of the secretary of the department to which the facility is or will be assigned: Provided, That records of such assessments, and any other records determined by the
Secretary of the Department of Military Affairs and Public Safety to compromise the safety and security at any proposed or existing state facility, are not public records and are not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 et seq. of this code.

(d) The director shall:

(1) On or before July 1, 1999, propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 of this code. The rules shall, at a minimum, establish ranks and the duties of officers within the membership of the division.

(2) On or before July 1, 1999, enter into an interagency agreement with the Secretary of the Department of Military Affairs and Public Safety and the Secretary of the Department of Administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel. A copy of the interagency agreement shall be delivered to the Governor, the President of the West Virginia Senate and the Speaker of the West Virginia House of Delegates and a copy shall be filed in the office of the Secretary of State and shall be a public record.

(3) Deliver a monthly status report to the Speaker of the West Virginia House of Delegates and the President of the West Virginia Senate.

(4) Require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical information, to have its employees submit to a fingerprint-based state and federal background inquiry through the state repository, and require a new employee who is employed to provide services on the grounds or in the building of the Capitol Complex to submit to an employment eligibility check through E-verify.
(i) After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol Complex for purposes of verifying compliance with this section.

(ii) All current service providers shall, within ninety days of the amendment and reenactment of this section by the eightieth Legislature, ensure that all of its employees who are providing services on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or critical information submit to a fingerprint-based state and federal background inquiry through the state repository.

(iii) Any contract entered into, amended or renewed by an agency or entity of state government with a service provider shall contain a provision reserving the right to prohibit specific employees thereof from accessing sensitive or critical information or to be present at the Capitol Complex based upon results addressed from a criminal background check.

(iv) For purposes of this section, the term “service provider” means any person or company that provides employees to a state agency or entity of state government to work on the grounds or in the buildings that make-up the Capitol Complex or who have access to sensitive or critical information.

(v) In accordance with the provisions of Public Law 92-544 the criminal background check information will be released to the Director of the Division of Protective Services; and

(5) Be required to provide his or her approval prior to the installation of any and all electronic security systems.
purchased by any state agency which are designed to connect to the division’s command center.

(e) Effective July 1, 2017, the Director of Security and security officers of the Division of Culture and History shall be made part of, and be under the supervision and direction of the Division of Protective Services. Security for all Capitol Complex properties of the Division of Culture and History shall be the responsibility of the Division of Protective Services.

CHAPTER 218

(H. B. 4462 - By Delegates Byrd, Hollen, Folk, Criss, Robinson, Phillips, Dean, Kelly, Westfall, Canestraro and Summers)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §15-2-18 of the Code of West Virginia, 1931, as amended, relating to allowing off duty members and officers of the State Police to contract to work for a private person or entity during off duty hours as long as the type of the contract work does not violate State Police rules as to location or nature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-18. Officers or members failure to perform duties; general penalty; providing extraordinary police or security services by contract.

(a) Any officer or member of the State Police who demands or receives from any person, firm or corporation
any money or other thing of value as a consideration for the performance of, or the failure to perform, his or her duties under the rules of the superintendent and the provisions of this article, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than five years, and any such officer or member of the State Police who violates any other provisions of this article, for which no other penalty is expressly provided, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or confined in jail for not more than four months, or both fined and confined.

(b) Notwithstanding any other provision of this article to the contrary, the superintendent may contract with public, quasi-public, military, or private entities to provide extraordinary police or security services by the State Police when it is determined by the superintendent to be in the public interest. The superintendent shall assign the personnel, equipment, or facilities he or she considers necessary and the State Police shall be reimbursed for the wages, overtime wages, benefits, and costs of providing the contract services as negotiated between the parties. The compensation paid to State Police personnel by virtue of contracts provided for in this section shall be paid from a special account and shall be excluded from any formulation used to calculate an employee’s benefits. All requests for obtaining extraordinary police or security services shall be made to the superintendent in writing and shall explain the funding source and the authority for making the request. An officer or member of the State Police may not be required to accept any assignment made pursuant to this subsection. Every officer or member assigned to duty under this section shall be paid according to the hours and overtime hours actually worked notwithstanding that officer’s or member’s status as exempt personnel under the Federal Labor Standards Act or applicable state statutes. Every contract entered into under this subsection shall contain the provision that in the event of public disaster or emergency where the reassignment to official duty of all officers and
members is required, neither the State Police nor any of its
officers or members are liable for any damages incurred as the
result of the reassignment. Further, any entity contracting with
the State Police, an officer, or member under this section shall
also agree as part of that contract to hold harmless and
indemnify the state, State Police and its personnel from any
liability arising out of employment under the contract. The
superintendent may propose legislative rules for promulgation
in accordance with §29A-3-1 et seq. of this code, relating to
the implementation of any contracts made under this
subsection: Provided, That the rules shall expressly prohibit
private employment of officers or members in circumstances
involving labor disputes. Notwithstanding any provision of
this article to the contrary, an officer or member may contract
to work for a private person or entity during his or her off duty
hours: Provided, however, That the contract work may not be
a type prohibited by this code or the rules of the State Police
on the locations and the nature of services provided.

CHAPTER 219

(Com. Sub. for S. B. 10 - By Senators Sypolt,
Clements, Rucker, Smith, Maroney, Cline and
Gaunch)

[Passed March 10, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §8-19-2 of the Code of West
Virginia, 1931, as amended; to amend said code by adding
thereto two new sections, designated §8-19-2a and §8-19-2b;
to amend and reenact §16-13A-9 of said code; and to amend
and reenact §24-2-1, §24-2-2, §24-2-3, and §24-2-4b of said
code, all relating generally to the jurisdiction of the Public
Service Commission; excluding the setting and adjustment of
rates, fees, and charges of municipal power systems from the jurisdiction of the Public Service Commission; providing for a right of appeal by customers; providing public service districts may accept payments for all fees and charges due by credit or check card; providing procedures and guidance for utilization of this method of payment; and clarifying the commission’s jurisdiction as modified by chapters 161 and 209, Acts of the Legislature, regular session, 2017, over Internet protocol-enabled service, voice-over Internet protocol-enabled service, stormwater services by a public service district, political subdivisions providing separate or combined water and/or sewer services, and certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART II. LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS.

§8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

For the purposes of this section:

(a) “Contract” means an agreement entered into by a municipality with any other party for the purchase of electric output, capacity, or energy from a project as defined herein;

(1) “Any other party” means any other legal entity, including, but not limited to, another municipality, political subdivision, public authority, agency, or instrumentality of any state or the United States, a partnership, a limited partnership, a limited liability company, a corporation, an
electric cooperative or an investor-owned utility existing under the laws of any state; and

(3) “Project” or “projects” means systems or facilities owned by another party and used for the generation, transmission, transformation, or supply of electric power, or any interest in them, whether an undivided interest as a tenant in common or otherwise, or any right to the output, capacity, or services thereof.

(b) In addition to the general authority to purchase electricity on a wholesale basis for resale to its customers, any municipality that owns and operates an electric power system under the provisions of this article may enter into a contract with any other party for the purchase of electricity from one or more projects located in the United States that provides that the contracting municipality is obligated to make payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon performance or nonperformance by any other party. The contract may provide that, in the event of a default by the municipality or any other party to the contract in the performance of each entity’s obligations under the contract, any nondefaulting municipality or any other party to the contract shall on a pro rata basis succeed to the rights and interests of, and assume the obligations of, the defaulting party.

(c) Notwithstanding any other provisions of law, ordinance or charter provision to the contrary, a contract under §8-19-2(b) of this code may extend for more than 50 years or 50 years from the date a project is estimated to be placed into normal continuous operation and the execution and effectiveness of the contract is not subject to any authorizations or approvals by the state or any agency,
commission, instrumentality, or political subdivision thereof except as otherwise specifically required by law.

(d) A contract under §8-19-2(b) of this code may provide that payments by the municipality are made solely from and may be secured by a pledge of and lien upon revenues derived by the municipality from ownership and operation and that payments shall constitute an operating expense of the electric power system. No obligation under the contract shall constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of the municipality’s electric power system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for the payment of any obligation under the contract.

(e) A municipality contracting under the provisions of §8-19-2(b) of this code is obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services it sells, furnishes, or supplies through its electric power system in an amount sufficient to provide revenues adequate to meet its obligations under the contract and to pay any and all other amounts payable from or constituting a charge and lien upon the revenues, including the amounts necessary to pay the principal and interest on any municipal bonds issued related to its electric power system: Provided, That any change in the rates and charges of the municipality to the customers of the electric power system under the provisions of this section are subject to the provisions and requirements of §8-19-2a of this code and the obligations of the municipality under the contract are costs of providing electric service within the meaning of that section.

§8-19-2a. Procedure for changing rates of municipal electric power systems; legislative findings.

All rates, fees, and charges set by municipal electric power systems shall be just, reasonable, applied without
unjust discrimination between or preference for any customer or class of customer, and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable slant-in-service depreciation expense. The rates and charges shall be adopted by the power system’s governing board by municipal ordinance to be effective not sooner than 45 days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress, such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services:

Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective, and the governing body shall give its customers other reasonable notices as will allow filing of timely objections to the proposed rate change and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. Notwithstanding the exclusion of municipal power systems’ rates, fees, charges, and rate-making process from the jurisdiction of the Public Service Commission, municipal power systems shall submit information regarding their rates, fees, and charges to the commission as set forth in §24-2-9 of this code.

§8-19-2b. Right of appeal by customers.

Customers may appeal a rate increase to the circuit court of the county in which the municipality is located on the grounds that the rate ordinance or its passage does not comply with the provisions of this article by filing a petition, signed by at least 750 customers or 25 percent of the customers served by the municipal electric utility,
whichever is fewer. Any petition challenging the ordinance must be filed within 30 days following the adoption of the rate ordinance.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a) (1) The board may make, enact, and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection, and the use of any public service properties owned or controlled by the district. The board shall establish, in accordance with this article, rates, fees, and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation, and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article, and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees, and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial, and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of §16-13A-9(a)(1)(A), §16-13A-9(a)(1)(B), and §16-13A-9(a)(1)(C) of this code; or
(E) Any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road, and drainage easements or stormwater facilities constructed, owned, or operated by the West Virginia Division of Highways.

(2) The board of a public service district with at least 4,500 customers and annual combined gross revenue of $3 million or more from its separate or combined water and sewer services may make, enact, and enforce all needful rules in connection with the enactment or amendment of rates, fees, and charges of the district. At a minimum, these rules shall provide for:

(A) Adequate prior public notice of the contemplated rates, fees, and charges by causing a notice of intent to effect such a change to be provided to the customers of the district for the month immediately preceding the month in which the contemplated change is to be considered at a hearing by the board. Such notice shall include a statement that a change in rates, fees, and charges is being considered, the time, date, and location of the hearing of the board at which the change will be considered and that the proposed rates, fees, and charges are on file at the office of the district for review during regular business hours. Such notice shall be printed on, or mailed with, the monthly billing statement, or provided in a separate mailing.

(B) Adequate prior public notice of the contemplated rates, fees, and charges by causing to be published, after the first reading and approval of a resolution of the board considering such revised rates, fees, and charges but not less than one week prior to the public hearing of the board on such resolution, as a Class I legal advertisement, of the proposed action, in compliance with the provisions of §59-3-1 et seq. of this code. The publication area for publication shall be all territory served by the district. If the district
provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall summarize the current rates, fees, and charges and the proposed changes to said rates, fees, and charges; the date, time, and place of the public hearing on the resolution approving such revised rates, fees, and charges and the place or places within the district where the proposed resolution approving the revised rates, fees, and charges may be inspected by the public. A reasonable number of copies of the proposed resolution shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed revised rates, fees and charges.

(D) The resolution proposing the revised rates, fees, and charges shall be read at two meetings of the board with at least two weeks intervening between each meeting. The public hearing may be conducted by the board prior to, or at, the meeting at which the resolution is considered for adoption on the second reading.

(E) Rates, fees, and charges approved by resolution of the board shall be forwarded in writing to the county commission with the authority to appoint the members of the board. The county commission shall publish notice of the proposed revised rates, fees, and charges by a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. Within 45 days of receipt of the proposed rates, fees, and charges, the county commission shall take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees and charges, as presented to the county commission, shall be effective with no further action by the board or county commission. In any event, this 45-day period shall be
mandatory unless extended by the official action of both the board proposing the rates, fees, and charges, and the appointing county commission.

(F) Enactment of the proposed or modified rates, fees, and charges shall follow an affirmative vote by the county commission and shall be effective no sooner than 45 days following action. The 45-day waiting period may be waived by public vote of the county commission only if the commission finds and declares the district to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.

(G) The public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the customers served by the public service district, whichever is fewer, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees, and charges under the provisions of this subdivision may file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: Provided, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission’s final action approving, modifying, or rejecting such rates, fees and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees, and charges approved by resolution of the board, without final action by the county commission to approve, modify, or reject such rates, fees, and charges, and the circuit court shall resolve said complaint: Provided, however, That the rates, fees, and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set
aside, altered, or amended by the circuit court in an order to be followed in the future.

(3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant’s specific customer class or $50 with the district to secure the payment of service rates, fees, and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or $50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant’s specific customer class or $50. In any case where a deposit is forfeited to pay service rates, fees, and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant’s specific customer class or $50 has been remitted to the district. After 12 months of prompt payment history, the district shall return the deposit to the customer or credit the customer’s account at a rate as the Public Service Commission may prescribe: Provided, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for
a period of 20 days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees, and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, 10 days after the water or gas services become delinquent: Provided, however, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the board to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separate water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer, and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the
sugar or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: Provided, however, That any termination of water service must comply with all rules and orders of the Public Service Commission: Provided further, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Bureau for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses, dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment, and disposal of sewage and waste matters from the houses, dwellings, and buildings where there is gravity flow or transportation by any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code and the houses, dwellings, and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer
facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings’ exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance, and purchase of a pump or any other method approved by the Bureau for Public Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than 30 days after service of petition to the appropriate owners, tenants, or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant, or occupant of any house, dwelling, or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods approved by the Bureau for Public Health from the house, dwelling, or building into the sewer facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and charges for services established under this article only after 30 days’ notice of the availability of the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner’s, tenant’s, or occupant’s specific customer class.

(e) The owner, tenant, or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve
a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district’s authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System’s designated service area. It is further hereby found, determined, and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant, or occupant shall pay the rates, fees, and charges for stormwater services established under this article only after 30 days’ notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates, and charges of the district for either water facilities, sewer facilities, gas facilities, or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank, and priority with the lien on the premises of state, county, school, and municipal taxes. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater, or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal
filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in §22-11-3 of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by §22-11-11 of this code, is exempt from the provisions of this section.

(h) A public service district which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees, or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

(i) Notwithstanding any code provision to the contrary, a public service district may accept payment for all fees and charges due, in the form of a payment by a credit or check card transaction or a direct withdrawal from a bank account. The public service district may set a fee to be added to each transaction equal to the charge paid by the public service district for use of the credit or check card or direct withdrawal by the payor. The amount of such fee shall be disclosed to the payor prior to the transaction and no other fees for the use of a credit or check card or direct withdrawal may be imposed upon the payor and the whole of such charge or convenience fee shall be borne by the payor:
Provided, That, to the extent a public service district desires to accept payments in the forms described in this subsection and does not have access to the equipment or receive the services necessary to do so, the public service district shall first obtain three bids for services and equipment necessary to affect the forms of transactions described in this subsection and use the lowest qualified bid received. Acceptance of a credit or check card or direct withdrawal as a form of payment shall comport with the rules and requirements set forth by the credit or check card provider or banking institution.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas, or electricity by municipalities or others; sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative,
alternative method is a public utility function and subject to
the jurisdiction of the Public Service Commission
regardless of the number of customers served by the
innovative, alternative method; any public service district
created under the provisions of §16-13A-1, et seq. of this
code, except that the Public Service Commission will have
no jurisdiction over the provision of stormwater services by
a public service district; toll bridges, wharves, ferries; solid
waste facilities; and any other public service: Provided,
however, That natural gas producers who provide natural
gas service to not more than 25 residential customers are
exempt from the jurisdiction of the commission with regard
to the provisions of such residential service: Provided
further, That upon request of any of the customers of such
natural gas producers, the commission may, upon good
cause being shown, exercise such authority as the
commission may deem appropriate over the operation, rates,
and charges of such producer and for such length of time as
the commission may consider to be proper.

(b) The jurisdiction of the commission over political
subdivisions of this state providing separate or combined
water and/or sewer services and having at least 4,500
customers and annual combined gross revenues of $3
million or more that are political subdivisions of the state is
limited to:

(1) General supervision of public utilities, as granted
and described in §24-2-5 of this code;

(2) Regulation of measurements, practices, acts, or
services, as granted and described in §24-2-7 of this code;

(3) Regulation of a system of accounts to be kept by a
public utility that is a political subdivision of the state, as
granted and described in §24-2-8 of this code;

(4) Submission of information to the commission
regarding rates, tolls, charges, or practices, as granted and
described in §24-2-9 of this code;
(5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees and charges, service areas and contested utility combinations: Provided, That any request for an investigation related to such a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information as the commission considers necessary is filed: Provided, however, That the disputed rates, fees, and charges so fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission’s exercise of the powers enumerated in this section and the commission shall resolve these complaints.

(8) In the event that a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged deficiency or breach.
(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall be subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for such facility were a siting certificate issued under §24-2-11c of this code and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material
modification thereof as provided in §24-2-1(d)(5) of this
code.

(2) Any person, corporation, or other entity that intends
to construct or construct and operate an electric generating
facility to be located in this state that has been designated as
an exempt wholesale generator under applicable federal
law, or will be so designated prior to commercial operation
of the facility, and for which facility the owner or operator
does not hold a certificate of public convenience and
necessity issued by the commission on or before July 1,
2003, shall, prior to commencement of construction of the
facility, obtain a siting certificate from the commission
pursuant to the provisions of §24-2-11c of this code in lieu
of a certificate of public convenience and necessity pursuant
to the provisions of §24-2-11 of this code. An owner or
operator of an electric generating facility as is described in
this subdivision for which a siting certificate has been issued
by the commission shall be subject to §24-2-11c(e) through
§24-2-11c(j) of this code and shall not otherwise be subject
to the jurisdiction of the commission or to the provisions of
this chapter with respect to such facility except for the
making or constructing of a material modification thereof as
provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating
facility located in this state that had not been designated as
an exempt wholesale generator under applicable federal law
prior to commercial operation of the facility that generates
electric energy solely for sale at retail outside this state or
solely for sale at wholesale in accordance with any
applicable federal law that preempts state law or solely for
both such sales at retail and such sales at wholesale and that
had been constructed and had engaged in commercial
operation on or before July 1, 2003, shall not be subject to
the jurisdiction of the commission or to the provisions of
this chapter with respect to such facility, regardless of
whether such facility subsequent to its construction has been
or will be designated as an exempt wholesale generator
under applicable federal law: Provided, That such owner or operator shall be subject to §24-2-1(d)(5) of this code if a material modification of such facility is made or constructed.

(4) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity for the
modification pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of this code, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection shall not be deemed to affect or limit the commission’s jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

(e) The commission shall not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

1. “Internet protocol-enabled service” means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

2. “Voice-over Internet protocol service” means any service that:
(i) Enables real-time two-way voice communications that originate or terminate from the user’s location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user’s location.

(3) The term “voice-over Internet protocol service” includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission shall not have jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.

§24-2-2. General power of commission to regulate public utilities.

(a) The commission may investigate all rates, methods, and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules, and timetables in effect and used by the public utility or other person to be filed with the commission, and all other information desired by the commission relating to the investigation and
requirements, including inventories of all property in the form and detail as the commission prescribes. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals directly, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge, or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated, by or pursuant to, an act of Congress and may prescribe a rate, charge, or toll that is just and reasonable, and change or prohibit any practice, device, or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case may the rate, toll, or charge be more than the service is reasonably worth, considering the cost of the service. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, modified, or revoked by order or decree of a court of competent jurisdiction: Provided, That in the case of utilities used by emergency shelter providers, the commission shall prescribe rates, charges or tolls that are the lowest available. “Emergency shelter provider” means any nonprofit entity which provides temporary emergency housing and services to the homeless or to victims of domestic violence or other abuse.

(b) Notwithstanding any other provision of this code to the contrary, rates are not discriminatory if, when considering the debt costs associated with a future water or sewer project which would not benefit existing customers, the commission establishes rates which ensure that the future customers to be served by the new project are solely responsible for the debt costs associated with the project.
(c) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state providing a separate or combined services and having at least 4,500 customers and annual combined gross revenues of $3 million or more is limited to those powers enumerated in §24-2-1(b) of this code.

(d) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission does not extend over the setting or adjustment of rates, fees, and charges of municipal power systems. The rates, fees, charges and rate-making process of municipal power systems is governed by the provisions of §8-19-2a of this code.

§24-2-3. General power of commission with respect to rates.

(a) The commission may enforce, originate, establish, change, and promulgate tariffs, rates, joint rates, tolls, and schedules for all public utilities except for municipal power systems and water and/or sewer utilities that are political subdivisions of this state providing a separate or combined services and having at least 4,500 customers and annual combined gross revenues of $3 million or more: Provided, That the commission may exercise such rate authority over municipally owned natural gas utilities or a municipally owned water and/or sewer utility having less than 4,500 customers or annual combined gross revenues of less than $3 million only under the circumstances and limitations set forth in §24-2-4b of this code, and subject to the provisions set forth in §24-2-3(b) of this code. And whenever the commission, after hearing, finds any existing rates, tolls, tariffs, joint rates, or schedules enacted or maintained by a utility regulated under the provisions of this section to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls, or schedules to be followed in the future in lieu of those found to be unjust,
unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provisions of law, and the commission, in fixing the rate of any railroad company, may fix a fair, reasonable, and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of that railroad.

(b) Any complaint filed with the commission by a resale or wholesale customer of a municipally owned water and/or sewer utility having less than 4,500 customers or annual combined gross revenue of less than $3 million concerning rates, fees, or charges applicable to such resale or wholesale customer shall be filed within 30 days of the enactment by the governing body of the political subdivision of an ordinance changing rates, fees, or charges for such service. The commission shall resolve said complaint within 120 days of filing. The 120-day period for resolution of the complaint may be tolled by the commission until the necessary information showing the basis of the rates, fees, charges, and other information as the commission considers necessary is filed: Provided, That rates, fees, and charges so fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future: Provided, however, That the commission shall have no authority to order refunds for amounts collected during the pendency of the complaint proceeding unless the rates, fees, or charges so enacted by the governing body were enacted subject to refund under the provisions of §24-2-4b(d)(2) or §24-2-4b(g) of this code.

(c) In determining just and reasonable rates, the commission may audit and investigate management practices and policies, or have performed an audit and investigation of such practices and policies, in order to determine whether the utility is operating with efficiency and is utilizing sound management practices. The commission shall adopt rules and regulations setting forth the scope, frequency, and application of such audits and
investigations to the various utilities subject to its jurisdiction. The commission may include the cost of conducting the management audit in the cost of service of the utility.

(d) In determining just and reasonable rates, the commission shall investigate and review transactions between utilities and affiliates. The commission shall limit the total return of the utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives, and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipal water and/or sewer utilities that are political subdivisions of the state having less than 4,500 customers or annual combined gross revenues of less than $3 million, except for municipally operated commercial solid waste facilities as defined in §22-15-2 of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of §24-2-4 or §24-2-4a of this code, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives, and municipally operated public utilities that are political subdivisions of the state providing water, sewer, and/or natural gas services that are subject to the provisions of this section and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination between or preference for any customer or class of customer and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the
cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The rates and charges shall be adopted by the electric, natural gas, telephone cooperative, or political subdivision’s governing board or body and, in the case of the municipally operated public utility, by municipal ordinance to be effective not sooner than 45 days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services:

Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective and the utility governing body shall give its customers and, in the case of a cooperative, its customers, members, and stockholders, other reasonable notices as will allow filing of timely objections to the proposed rate change and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in §24-2-4b(c)(1), §24-2-4b(c)(2), or §24-2-4b(c)(3) of this code, is received and the electric cooperative, natural gas cooperative, or telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of 120 days and the 100-day period limitation for issuance of an order by a hearing examiner, as contained in §24-2-4b(d) and §24-2-4b(e) of
this code, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify the rates and charges of electric cooperatives, natural gas cooperatives, telephone cooperatives, or municipal natural gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of the state and having less than 4,500 customers or annual combined revenues of less than $3 million upon the filing of a petition within 30 days of the adoption of the ordinance or resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than 25 percent of the customers served by the municipally operated natural gas public utility or municipally owned water and/or sewer utility or 25 percent of the membership of the electric, natural gas, or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally owned natural gas public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers of the municipally owned natural gas public utility who is affected by the change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between a customer or group of customers and other customers of the municipal utility. The petition shall be accompanied by evidence of discrimination.
(d) (1) The filing of a petition with the commission signed by not less than 25 percent of the customers served by the municipally owned natural gas public utility or a municipally owned water and/or sewer utility having less than 4,500 customers or annual combined gross revenues of less than $3 million or 25 percent of the membership of the electric, natural gas, or telephone cooperative residing within the state under §24-2-4b(c) of this code shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of 120 days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under §24-2-4b(c)(2) or §24-2-4b(c)(3) of this code, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of 120 days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or state code that establishes or proposes a rate increase that results in an increase of less than 25 percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to go into effect, subject to refund, upon the date stated in that ordinance. Any refund determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded as a credit against each customer’s account for a period of up to six months after entry of the commission’s final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission’s final order shall be directly refunded to the customer by check. In the case of rates established or proposed that increase by more than 25 percent of the gross revenue of the municipally operated public utility, the utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.
(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall, within 100 days from the date the rates or charges would otherwise go into effect, unless otherwise tolled as provided in §24-2-4b(b) of this code, issue an order approving, disapproving, or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas, or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of §24-2-4b(c) of this code, the commission may exercise the power granted to it under the provisions of §24-2-3 of this code, consistent with the applicable rate provisions of §8-19-4 of this code and §16-13-16 of this code. The commission may determine the method by which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas, or telephone cooperative or municipality requests a hearing.

(g) The commission may, upon petition by an electric, natural gas, or telephone cooperative or municipal natural gas public utility or a municipally owned water and/or sewer utility, having less than 4,500 customers or annual combined gross revenues of less than $3 million allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission shall waive the 45-day waiting period provided for in §24-2-4b(b) of this code and the 120-day suspension period provided for in §24-2-4b(d) of this code.

(h) The commission shall, upon written request of the governing body of a political subdivision, provide technical assistance to the governing body in its deliberations regarding a proposed rate increase.
(i) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services, or contracts by municipally operated public utilities for services which are transmitted and sold outside of the State of West Virginia.

(j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state and having at least 4,500 customers and annual gross combined revenues of $3 million or more shall be limited to those powers enumerated in §24-2-1(b) of this code.

(k) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission does not extend over the setting and adjustment of the rates, fees, and charges of municipal power systems. The rates, fees, charges, and rate-making process of municipal power systems shall be governed by the provisions of §8-19-2a of this code.

CHAPTER 220

(Com. Sub. for H. B. 4207 - By Delegates Shott and Hanshaw)

[Passed March 5, 2018; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §39-4-20 of the Code of West Virginia, 1931, as amended, relating to receiving a commission to act as a notary public; authorizing an online electronic application process to apply to receive a commission to act as a notary public; removing the oath of office and requiring an applicant to swear or affirm under penalty of perjury that answers to questions in the application are true and if appointed, the applicant will perform faithfully
all notarial acts in accordance with the law; and eliminating the $1000 bond requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-20. Commission as notary public; qualifications; no immunity or benefit; disposition of fees.

(a) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission as a notary public through the Secretary of State’s online notary system. The applicant shall comply with and provide the information required by rules promulgated by the Secretary of State and pay any application fee.

(b) An applicant for a commission as a notary public must:

(1) Be at least eighteen years of age;

(2) Be a citizen or permanent legal resident of the United States;

(3) Be a resident of or have a place of employment or practice in this state;

(4) Be able to read and write English;

(5) Have a high school diploma or its equivalent; and

(6) Not be disqualified to receive a commission under §39-4-23 of this code.

(c) Before issuance of a commission as a notary public, an applicant shall provide a statement on the notary application that they solemnly swear or affirm, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; that he or she has carefully read the notaries public law of West Virginia; and, if appointed and commissioned as a notary public, he or she
will perform faithfully, to the best of his or her ability all notarial acts in accordance with the law.

(d) On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of five years.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

CHAPTER 221

(Com. Sub. for H. B. 4350 - By Delegates Howell, Hamrick, Hill, Martin, Criss, Paynter, Moore, Statler, Kessinger and Fast)

[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §47-1A-11 and §47-1A-14 of the Code of West Virginia, 1931, as amended, all relating to eliminating the regulation of upholsterers by the Commissioner of Labor; removing tagging requirements for upholsterers; and eliminating annual registration and permit fees for upholsterers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.

§47-1A-11. Statements required on tags to be affixed to bedding.

1 (1) Every article of bedding made for sale, sold, or offered for sale shall have attached thereto a tag on which is
stated the name of the filling material used, that such material used is new or secondhand and, when required to be sterilized, that such material has been sterilized and the number of the sterilization permit. Such tag shall also contain the name and address of the maker or the vendor and the registry number, as hereinafter provided, of the maker.

(2) In the description of the filling material used on any tag attached to an article of bedding, no term or designation intended or likely to mislead shall be used; but where such article contains more than one material, the amount of such materials shall be stated on the tag and there shall be no variance in excess of 10 percent from the amount stated on the tag: Provided, That no variance shall be allowed for filling material which is described as “all”, “pure”, “100%” or terms of similar import.

(3) A complete secondhand article of bedding which has not been remade or renovated may be sold “as is” without being sterilized, but the original tag shall be removed by the vendor and he or she shall attach a tag stating that the article is secondhand – “contents unknown”. This requirement shall not apply to articles sold at public auction, the sale of antique furniture, or to a private sale from the home of the owner direct to the purchaser: Provided, That the exceptions herein stated shall not authorize the sale of an article of bedding that has been exposed to infectious or contagious disease and which, after such exposure, has not been sterilized and approved for use.

*§47-1A-14. Annual registration and permit fees.*

(a) The annual registration fee for all manufacturers shipping or selling articles of bedding in the State of West Virginia shall be $90, payable on the first day of the fiscal year. Any manufacturer who submits an annual registration fee on or after July 16 shall pay a $25 late fee in addition to the annual fee.

*Note:* This section was also amended by H. B. 4401 (Chapter 137) which passed prior to this act.
(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. Through June 30, 2019, 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 obligation: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division’s funding obligations.

CHAPTER 222

(Com. Sub. for S. B. 307 - By Senators Trump, Blair, Plymale and Boso)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §17-16-1 of the Code of West Virginia, 1931, as amended, relating to declaring that fundraising conducted by a volunteer fire department, school-sponsored or -approved group, bona fide charity, or nonprofit entity on a state highway or roadway within the boundaries of a municipality does not constitute an obstruction or nuisance if done during daylight hours, at signal controlled
intersections requiring all vehicles to stop, or at a location approved by municipal law enforcement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. OBSTRUCTIONS.

§17-16-1. “Obstructions” defined; obstructions declared nuisance; nuisance exception; abatement of nuisance by injunction.

Obstructions, within the meaning of this chapter, shall include trees which have been cut or have fallen either on adjacent land or within the bounds of a public road in such a manner as to interfere with travel thereon; limbs of trees which have fallen within a public road or branches of trees overhanging the same so as to interfere with travel thereon; landslides; carcasses of dead animals, lumber, wood, or logs piled within the bounds of a public road; machines, vehicles, conveyances, and implements abandoned or habitually placed within the bounds of a public road; fences, buildings, or other obstructions within the bounds of a public road; ashes, cinders, earth, stone, or other material placed on a public road or in any ditch or waterway along such road; water diverted from its regular course or channel so as to injure or endanger a public road; any road connected without lawful authority with a public road in such manner as to obstruct or impede travel thereon or the flow of water in the gutters or drains along such road; pipelines, telegraph, telephone, trolley, or other poles and wires connected therewith, constructed or erected on a public road in such a way as to interfere with the use thereof; or any other thing which will prevent the easy, safe, and convenient use of such public road for public travel. Such obstructions shall be considered within the bounds of any state or county-district road whenever any part thereof shall occupy any part of the right-of-way provided by law or acquired for road purposes, not including the additional land acquired for slopes, cuts, or fills. Fundraising by a volunteer fire department including boot drives and bucket brigades, and similar fund raising activities by school-approved or -sponsored groups,
bona fide charitable organizations and nonprofit service organizations within the boundaries of a municipality do not constitute an obstruction or nuisance under this chapter: Provided, That the fund raising activity is conducted during daylight hours at a signal controlled intersection, an intersection requiring all vehicles to stop, or at a location approved for such an activity by the municipal law-enforcement agency. Such obstructions so placed and left within the limits of such road are hereby declared to be public nuisances, and, in addition to other remedies provided in this chapter, the county court or the State Road Commission, as the case may be, may apply to the circuit court, or other court of competent jurisdiction of the county in which they may be, for an injunction to abate such nuisance.

CHAPTER 223

(Com. Sub. for S. B. 445 - By Senators Boso, Swope, Gaunch, Jeffries, Rucker, Maroney, Plymale, Maynard and Beach)

[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-17a; to amend and reenact §17-4-17b of said code; and to amend said code by adding thereto a new section, designated §17-4-17e, all relating to utility relocation; stating legislative findings; defining term; authorizing the Division of Highways to acquire real or personal property for utility accommodation; authorizing the division to lease real property to utilities; allowing the division to pay for utility relocation costs subject to reimbursement agreement; specifying methods of preliminary engineering design work completion and utility
relocation construction work payment; providing legislative and emergency rule-making authority; and providing for allocation of costs and the repayments thereof for utility relocation on any state highway construction projects financed by proceeds of bonds or notes which are issued before July 1, 2021.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-17a. Acquisition of property for utility accommodation purposes; utility defined.

(a) The Legislature finds that it is in the public interest for utility facilities to be accommodated on the right-of-way of state highways when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of federal, state, or local laws, legislative rules, or agency policies. Utilities provide an essential service to the general public and, as a matter of sound economic public policy and law, utilities have used state road rights-of-way for transmitting and distributing their services. Such accommodation of utility facilities on the right-of-way of state highways serves an important public purpose by increasing public access to utility services.

(b) “Utility” means, for purposes of this chapter, privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, data, information, video services, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term “utility” also includes those similar facilities which are owned or leased by a
government agency for its own use, or otherwise dedicated solely to governmental use.

(c) In addition to all other powers given and assigned to the commissioner in this chapter, the commissioner may acquire, either temporarily or permanently, in the name of the Division of Highways, and adjacent to public roadways or highways, all real or personal property, public or private, or any interests or rights therein, including any easement, riparian right, or right of access, determined by the commissioner to be necessary for present or presently foreseeable future utility accommodation purposes.

(d) Notwithstanding any provision of this article, the commissioner may lease real property held by the Division of Highways or any interest or right in the property, including airspace rights, if any, for the purpose of accommodating any utility that has requested a lease if the commissioner finds, in his or her sole discretion, that entering into the lease agreement with the utility is in the public interest. The term of any accommodation lease authorized by this section shall not exceed 30 years. Neither competitive bids nor public solicitations are required prior to entering into a utility accommodation lease. Any utility accommodation lease shall require the utility to pay fair market value for the real property interest as determined by the commissioner using common valuation methods, which shall include consideration of the use of the property for utility accommodation purposes: Provided, That amounts paid for property damage by the division in a condemnation case shall not be considered in the commissioner’s determination of fair market value. The commissioner shall have the option to charge and collect a one-time lease payment or fixed installment lease payments from a utility in connection with an accommodation lease. All moneys received from utility accommodation leases shall be paid into the state Treasury and credited to the State Road Fund. The provisions of this subsection are completely voluntary and shall not be interpreted to require any utility to lease any
real property, or any interest or right in the property, from the commissioner: Provided, however, That for any utility which is not subject to the jurisdiction of the Public Service Commission, the lease shall not contain any exclusivity provisions.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines on highway construction projects.

(a) Whenever the division reasonably determines that any public utility line or facility located upon, across, or under any portion of a state highway needs to be removed, relocated, or adjusted in order to accommodate a highway project, the division shall give to the utility reasonable notice in writing as mutually agreed, but not to exceed 18 months, directing it to begin the physical removal, relocation, or adjustment of such utility obstruction or interference at the cost of the utility, including construction inspection costs and in compliance with the rules of the division and the provisions of §29A-3-1 et seq. of this code.

(b) If the notice is in conjunction with a highway improvement project, it will be provided at the date of advertisement or award. Prior to the notice directing the physical removal, relocation, or adjustment of a utility line or facility, the utility shall adhere to the division’s utility relocation procedures for public road improvements which shall include, but not be limited to, the following:

(1) The division will submit to the utility a letter and a set of plans for the proposed highway improvement project;

(2) The utility must within a reasonable time submit to the division a written confirmation acknowledging receipt of the plans and a declaration of whether or not its facilities are within the proposed project limits and the extent to which the facilities are in conflict with the project;
(3) If the utility is adjusting, locating, or relocating facilities or lines from or into the division’s right-of-way, the utility must submit to the division plans showing existing and proposed locations of utility facilities;

(4) The utility’s submission shall include with the plans a work plan demonstrating that the utility adjustment, location, or relocation will be accomplished in a manner and time frame established by the division’s written procedures and instructions. The work plan shall specify the order and calendar days for removal, relocation, or adjustment of the utility from or within the project site and any staging property acquisition or other special requirements needed to complete the removal, relocation, or adjustment. The division shall approve the work plan, including any requests for compensation, submitted by a utility for a highway improvement project if it is submitted within the established schedule and does not adversely affect the letting date. The division will review the work plan to ensure compliance with the proposed improvement plans and schedule.

(c) If additional utility removal, relocation, or adjustment work is found necessary after the letting date of the highway improvement project, the utility shall provide a revised work plan within 30 calendar days after receipt of the division’s written notification of the additional work. The utility’s revised work plan shall be reviewed by the division to ensure compliance with the highway project or improvement. The division shall reimburse the utility for work performed by the utility that must be performed again as the result of a plan change on the part of the division.

(d) Should the utility fail to comply with the notice to remove, relocate, or adjust, the utility is liable to the division for direct contract damages, including costs, fees, penalties, or other contract charges, for which the division is proven to be liable to a contractor caused by the utility’s failure to timely remove, relocate, or adjust, unless a written extension is granted by the division. The utility shall not be liable for any delay or other failure to comply with a notice
to remove, relocate or adjust that is not solely the fault of
the utility, including, but not limited to, the following:

(1) The division has not performed its obligations in
accordance with the division’s rules;

(2) The division has not obtained all necessary rights-of-way that affect the utility;

(3) The delay or other failure to comply by the utility is
due to the division’s failure to manage schedules and
communicate with the utility;

(4) The division seeks to impose liability on the utility
based solely upon oral communications or communications
not directed to the utility’s designated contact person;

(5) The division changes construction plans in any
manner following the notice to remove or relocate and the
change affects the utility’s facilities; or

(6) Other good cause, beyond the control of and not the
fault of the utility, including, but not limited to, labor
disputes, unavailability of materials on a national level, act
of God, or extreme weather conditions.

(e) In order to avoid construction delays and to create an
efficient and effective highway program, the division may
schedule program meetings with the public utility on a
quarterly basis to assure that schedules are maintained.

(f) If a utility that is required by law to bear all or a
portion of its own relocation costs elects to pursue a
reimbursement agreement with the division pursuant to this
subsection and provides the division with sufficient
evidence to demonstrate that the utility is not adequately
staffed, equipped, or capitalized to perform such relocation
work with its own forces or contractors at a time convenient
to and in coordination with the associated highway project,
the division may pay for the associated relocation costs,
including, but not limited to, design engineering, design
review, construction, and inspection costs, out of the State
Road Fund: Provided, That the utility shall reimburse the
division in full for such portion of the relocation costs that
it is required by law to bear within two years of the
completion of the highway project. The division shall
deduct from the utility’s reimbursement amount any costs
resulting from work performed as a result of plan changes
made by the division. Before the division may pay any
relocation costs, the division and the utility shall enter into
a written reimbursement agreement containing terms that
are mutually acceptable to the division and the utility
seeking the reimbursement agreement.

(1) Preliminary engineering design work associated
with utility relocations to be paid for by the division
pursuant to a reimbursement agreement shall be completed
by any of the following methods:

(A) The division’s or the utility’s internal forces;

(B) A consultant selected by the division if the contract
is administered by the division: Provided, That the selected
consultant shall be pre-approved by the utility; or

(C) Inclusion as part of the highway construction
contract let by the division as agreed to by the utility:
Provided, That the subcontractor performing the
preliminary engineering design work associated with the
relocation is pre-approved by the utility.

(2) Utility relocation construction work paid for by the
division pursuant to a reimbursement agreement shall be
completed by either of the following methods:

(A) A contract awarded by the division to the lowest
qualified bidder based on an appropriate competitive
solicitation: Provided, That the lowest qualified bidder for
utility relocation construction work is pre-approved by the
utility; or
(B) Inclusion as part of the highway construction contract let by the division as agreed to by the utility: Provided, That the subcontractor performing the utility relocation construction work is pre-approved by the utility.

(3) All design and construction work paid for by the division pursuant to a reimbursement agreement is subject to the reasonable inspection and acceptance of the utility, whose acceptance shall not be unreasonably withheld, and shall be performed in accordance with the specifications and standards required by the utility.

(4) All relocation work performed pursuant to a reimbursement agreement shall conform to applicable state and federal laws or regulations.

(5) The provisions of this subsection are completely voluntary and shall not be interpreted to require any utility to enter into a reimbursement agreement with the division or avail itself of the options authorized by this subsection.

(6) The division may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code and the division may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code in order to comply with this subsection.

§17-4-17e. Utility relocation on state highway construction projects financed by proceeds of bonds or notes issued before July 1, 2021.

Subject to the provisions of §17-4-17d of this code, and notwithstanding any other provisions to the contrary, whenever the Commissioner of Highways determines that any utility facility located upon, across, above, or under any portion of a state highway needs to be relocated in order to accommodate a highway project funded, in whole or in part, with proceeds of bonds or notes issued by the division, commissioner, West Virginia Parkways Authority, or the State of West Virginia on or after January 1, 2018, and on
or before July 1, 2021, the commissioner shall notify the utility owning or operating the facility, which shall relocate the facility in accordance with this article and in accordance with the cost-sharing provisions of this section. The utility shall bear 85 percent of any such relocation costs, and the Division of Highways shall bear 15 percent of any such relocation costs. The division’s share shall be paid out of the State Road Fund or paid with other eligible funds, within two years of completion of the highway project, and shall be considered a cost of the highway project: Provided, That nothing in this section shall alter or amend the responsibility of the division to pay for the cost of utility facilities relocation when such costs are incurred to accommodate a highway project and such utilities maintain pre-existing property rights in their facilities’ present location.

CHAPTER 224

(Com. Sub. for H. B. 2694 - By Delegates Hamrick, Gearheart, Zatezalo, Howell, Atkinson, Ward, Williams, Statler, Moye, Sobonya and Butler)

[Passed March 2, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-4-55, relating to the study of the feasibility of the development and implementation of a program to facilitate commercial sponsorship of rest areas, welcome centers, roads, and vehicles; providing for sponsorship agreements; providing for agreement requirements; providing for disposition of funds received from agreements; providing for the promulgation of emergency or legislative rules; and providing for a report of the status of the program.
Be it enacted by the Legislature of West Virginia:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-55. Rest area, welcome center, road, and vehicle commercial sponsorship program.

(a) The Division of Highways shall undertake a study of the feasibility of implementing a program to facilitate commercial sponsorship of rest areas, welcome centers, roads, and vehicles owned or leased by the Division of Highways to help offset the costs of the operation and maintenance of rest areas, welcome centers, roads, and vehicles.

(b) The Division of Highways shall implement a program to facilitate commercial sponsorship of rest areas, welcome centers, roads, and vehicles owned or leased by the Division of Highways (1) if it is feasible and practicable, in accordance with the study required by subsection (a) of this section, and (2) upon approval of the proposed sponsorship program by the Federal Highway Administration.

(c) Upon implementation of the program, the Division of Highways may enter into sponsorship agreements with private entities in accordance with this section. A sponsorship agreement may allow a private entity to place signs and placards identifying itself as a sponsor of the rest area, welcome center, road or vehicle that is visible to the traveling public in exchange for consideration at fair market value. A sponsorship agreement may include any other provisions the Division of Highways deems necessary. Sponsorship agreements shall comply with all applicable state and federal rules and regulations.

(d) All net revenue received by the Division of Highways from the sponsorship agreements shall be deposited in the State Road Fund.

(e) The Commissioner of the Division of Highways may propose rules for legislative approval or emergency rules pursuant to §29A-3-1 et seq. of this code to establish and
implement the program as may be necessary to carry out the purposes of this section.

(f) On or before December 1, 2018, the Commissioner of the Division of Highways shall submit a report to the Joint Committee on Government and Finance detailing the status and progress of the feasibility study directed in subsection (a) of this section. If the sponsorship program is implemented, the commissioner shall also report to the Joint Committee on Government and Finance on the status of the sponsorship program.

CHAPTER 225

(Com. Sub. for H. B. 2983 - By Mr. Speaker (Mr. Armstead)

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §17-2A-8 of the Code of West Virginia, 1931, as amended, relating to requiring the Commissioner of the Division of Highways to implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system, and relating to updating certain statutory references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. ROADS AND HIGHWAYS.


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: Provided, That the commissioner shall implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system;

(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 on any other matters within the jurisdiction of the department;

(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 §17-17A-5b 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.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-2E-1, §17-2E-2, §17-2E-3, §17-2E-4, §17-2E-5, §17-2E-6, §17-2E-7, §17-2E-8, and §17-2E-9, all relating to providing a uniform and efficient system of broadband conduit installation coinciding with the construction, maintenance, or improvement of highways and rights-of-way under the oversight of the Division of Highways; making legislative findings; defining terms; providing procedures for broadband conduit installation in rights-of-way; providing for highway safety guidelines; establishing a procedure for joint use between telecommunications carriers; setting forth a procedure for monetary and in-kind compensation; providing a method for Division of Highways to offer excess conduit to a telecommunications carrier; setting forth standards to be utilized in agreements entered into by the Division of Highways and two or more telecommunications carriers in a single trench; providing that existing rules, policies, and procedures of the Division of Highways and United States Code shall control; and providing that the Commissioner of the Division of Highways may promulgate rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-1. Legislative findings.
(a) The Legislature finds that it is in the public interest to accommodate telecommunications facilities on Division of Highways right-of-way when the use of the right-of-way does not adversely affect the safety of the traveling public or impair the highway or its aesthetic quality or conflict with any federal, state, or local laws, rules, regulations, or policies.

(b) The Legislature further finds that a broadband connection is an essential part of developing the state and local economies, enhancing the transportation system and creating a safer and more secure environment for our citizens.

(c) The Legislature further finds that expanding telecommunication facilities will allow the state to participate in the E-Rate Program of funding for digital education in America to provide reliable services opportunities for education and training.

(d) The Legislature further finds that fast, reliable broadband connections enhance telemedical opportunities for our rural doctors and hospitals, linking them to our major medical centers. Thereby overcoming distance barriers, and improving access to medical services that often are not consistently available in rural communities.

(e) The Legislature further finds that instituting a dig once policy encourages telecommunications carriers to coordinate installation of broadband conduit to minimize costs to the carriers and minimize disruption and inconvenience to the traveling public.


In this article, unless the context otherwise requires:

(1) “Broadband conduit” or “conduit” means a conduit, innerduct or microduct for fiber optic cables that support facilities for broadband service.
(2) “Broadband service” has the same meaning as defined in §31G-1-2 of this code.

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

(4) “Division” means the Division of Highways.

(5) “Longitudinal access” means access to or the use of any part of a right-of-way that extends generally parallel to the traveled right-of-way.

(6) “Permit” means an encroachment permit issued by the Commissioner of the Division of Highways under the authority of this Code, and pursuant to the “Accommodation of Utilities On Highway Right Of Way and Adjustment and Relocation Of Utility Facilities On Highway Projects Policy”, or equivalent policy, as currently enforced by the Division of Highways, that specifies the requirements and conditions for performing work in a right-of-way.

(7) “Right-of-way” means land, property, or any interest therein acquired or controlled by the West Virginia Division of Highways for transportation facilities or other transportation purposes or specifically acquired for utility accommodation.

(8) “Telecommunications carrier” means a telecommunications carrier:

(A) As determined by the Public Service Commission of West Virginia; or

(B) That meets the definition of telecommunications carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §153.

(9) “Telecommunications facility” means any cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment or other equipment,
system or device that is used to transmit, receive, produce or distribute a signal for telecommunications purposes via wireline, electronic or optical means.

(10) “Utility facility” has the meaning ascribed to it in §17-2A-17a of this Code.

(11) “Wireless access” means access to and use of a right-of-way for the purpose of constructing, installing, maintaining, using, or operating telecommunications facilities for wireless telecommunications.


(a) Before obtaining a permit for the construction or installation of a telecommunications facility in a right-of-way, a telecommunications carrier must enter into an agreement with the Division consistent with the requirements of this article.

(b) Before granting permitted longitudinal access or wireless access to a right-of-way, the Division of Highways shall:

(1) First enter into an agreement with a telecommunications carrier that is competitively neutral and nondiscriminatory as to other telecommunications carriers.

(2) Upon receipt of any required approval or concurrence by the Federal Highway Administration the Division may issue a permit granting access under this section: Provided, That the Division of Highways shall comply with all applicable federal regulations with respect to approval of an agreement, including but not limited to 23 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:
(A) Specify the terms and conditions for renegotiation of the agreement;

(B) Set forth the maintenance requirements for each telecommunications facility;

(C) Be nonexclusive; and

(D) Be for a term of not more than 30 years.

(c) Unless specifically provided for in an agreement entered into pursuant to §17-2E-3(a) of this code, the Division of Highways may not grant a property interest in a right-of-way pursuant to this article.

(d) A telecommunications carrier shall compensate the Division of Highways for access to a right-of-way for the construction, installation, and maintenance of telecommunication facilities, the use of spare conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section. The compensation must be, without limitation:

(1) At fair market value;

(2) Competitively neutral;

(3) Nondiscriminatory;

(4) Open to public inspection;

(5) Calculated based on the geographic region of this state, taking into account the population and the impact on private right-of-way users in the region; and once calculated, set at an amount that encourages the deployment of digital infrastructure within this State:

(6) Paid in monetary compensation or with in-kind compensation, or a combination of monetary compensation and in-kind compensation; and
(7) Paid in a lump-sum payment or in annual installments, as agreed to by the telecommunications carrier and the Division of Highways.

(e) The Division may consider adjustments for areas, the Division in conjunction with the Council, determines are underserved or unserved areas of the state and may consider the value to such areas for economic development, enhancing the transportation system, expanding opportunities for digital learning, and telemedicine.

(f) For the purpose of determining the amount of compensation a telecommunications carrier must pay the Division of Highways for the use of spare conduit or excess conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the Division may:

(1) Conduct an analysis once every five years, in accordance with the rules, policies, or guidelines of the Division of Highways, to determine the fair market value of a right-of-way to which access has been granted pursuant to this section; and

(2) If compensation is paid in-kind, determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities.

(g) The value of in-kind compensation, or a combination of money and in-kind compensation, must be equal to or greater than the amount of monetary compensation that the Division of Highways would charge if the compensation were paid solely with money.

(h) The provisions of this article shall not apply to the relocation or modification of existing telecommunication facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of
telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.


(a) The Division of Highways, in its sole discretion, may deny any longitudinal access or wireless access if such access would compromise the safe, efficient, and convenient use of any road, route, highway, or interstate in this state for the traveling public.

(b) Any longitudinal access or wireless access to a right-of-way granted by the Division of Highways pursuant to this article does not abrogate, limit, supersede, or otherwise affect access granted or authorized pursuant to the Division’s rules, policies, and guidelines related to accommodation of utilities on highways’ rights-of-way and adjustment and relocation of utility facilities on highway projects.

§17-2E-5. Telecommunications carrier initiated construction and joint use.

(a) The Division of Highways shall provide for the proportionate sharing of costs between telecommunications carriers for joint trenching or trench sharing based on the amount of conduit innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the Division plans to use the trench, it shall pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way.

(b) Upon application for a permit, the carrier will notify, by email, the West Virginia Broadband Enhancement Council and all other carriers on record with the West Virginia Broadband Enhancement Council of the application. Other carriers have 30 calendar days to notify the applicant if they wish to share the applicant’s trench. This requirement extends to all underground construction technologies.
(c) The carrier shall also meet the following conditions for a permit:

(1) The telecommunications carrier will be required to place, at its sole expense, a Class II legal advertisement, in accordance with §59-3-2(a) of this code, and of a form and content approved by the Division of Highways, in the local project area newspaper, in the Charleston newspaper, on industry and the Division of Highways’ websites, and within other pertinent media, announcing the general scope of the proposed installation within the right-of-way and providing competing telecommunications carriers the opportunity to timely express an interest in installing additional telecommunication facilities during the initial installation. The legal advertisement is to run at least two consecutive weeks, and the telecommunications carrier is to notify the Division of any interest of other parties received.

(2) If a competing telecommunications carrier expresses interest in participating in the project, an agreement between the two (or more) telecommunications carriers will be executed by those entities, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. A copy of the executed agreement shall be provided to the Division of Highways.

(3) The telecommunications carrier that placed the legal advertisement is responsible for resolving in good faith all disputes between any competing telecommunications carriers that timely responded to the advertisement and that wishes to install facilities within the same portion of the rights-of-way to be occupied. Should a dispute arise between the initial telecommunications carrier and a competing telecommunications carrier, the initial telecommunications carrier will attempt to mediate the dispute. Any dispute that is not resolved by the telecommunications carriers shall be adjudicated by the Public Service Commission.
(d) If two or more telecommunications carriers are required or authorized to share a single trench, each carrier in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.

(e) The Commissioner of the Division of Highways shall promulgate rules governing the relationship between the telecommunications carriers, as hereinafter provided in this article.

§17-2E-6. Monetary and in-kind compensation.

(a) All monetary compensation collected by the Division of Highways pursuant to this article shall be deposited in the State Road Fund.

(b) In-kind compensation paid to the Division of Highways under an agreement entered into pursuant to this article may include, without limitation:

(1) Conduit or excess conduit;

(2) Innerduct;

(3) Dark fiber;

(4) Access points;

(5) Telecommunications equipment or services;

(6) Bandwidth; and

(7) Other telecommunications facilities as a component of the present value of the trenching.

(c) The Division of Highways shall value any in-kind compensation based on fair market value at the time of installation or review, and may also consider any valuation or cost information provided by the telecommunications carrier.
(d) In-kind compensation paid to the Division of Highways may be disposed of if both of the following conditions are met:

1. The telecommunications facility received as in-kind payment has not been used within 10 years of its installation; and

2. The Commissioner of the Division of Highways determines that the Division does not have an immediately foreseeable need for the telecommunications facility.

(e) Upon determining that it is appropriate to dispose of the telecommunications facility, the Division shall determine its current fair market value. The Division shall offer the provider or providers who made the in-kind payment the option to purchase any telecommunications facility obtained from such provider. If the provider or providers do not purchase the telecommunications facility, it shall be offered for public auction in the same manner as the Division auctions excess rights-of-way.

§17-2E-7. Multiple carriers in a single trench.

(a) If the Division of Highways enters into an agreement with two or more telecommunications carriers, a consortium or other entity whose members, partners or other participants are two or more telecommunications carriers, or, if the Division requires or allows two or more telecommunications carriers to share a single trench, the agreements entered into pursuant to this article shall require that the telecommunications carriers share the obligation of compensating the Division of Highways on a fair, reasonable and equitable basis, taking into consideration the proportionate uses and benefits to be derived by each telecommunications carrier from the trench, conduits, and other telecommunications facilities installed under the agreements.

(b) The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways from requiring every
participating telecommunications carrier to bear joint and several liability for the obligations owed to the Division of Highways under the agreements.

(c) Any agreement requiring two or more telecommunications carriers to share the obligation of compensating the Division of Highways shall provide the Division the right to review and audit the records and contracts of and among the participating carriers to ensure compliance with §17-2E-7(a) of this code.

§17-2E-8. Existing policies.

(a) The requirements set forth in this article do not alter existing rules, policies, and procedures relating to other utility facilities within a right-of-way or for accommodating utility facilities or other facilities under the control of the Division of Highways.

(b) The Division of Highways may consider the financial and technical qualifications of a telecommunications carrier when determining specific insurance requirements for contractors authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.

(c) If the Division of Highways authorizes longitudinal access, wireless access, or the use of, and access to, conduit or related facilities of the Division for construction and installation of a telecommunications facility, the Division may require an approved telecommunications carrier to install the telecommunications facility in the same general location as similar facilities already in place, coordinate their planning and work with other contractors performing work in the same geographic area, install in a joint trench when two or more telecommunications carriers are performing installations at the same time and equitably share costs between such carriers.
(d) The placement, installation, maintenance, repair, use, operation, replacement, and removal of telecommunications facilities with longitudinal access or wireless access to a right-of-way or that use or access conduit or related facilities of the Division shall be accommodated only when in compliance with this code and Division of Highways rules, policies and guidelines.


The Commissioner of the Division of Highways may promulgate rules pursuant to the provisions of §29A-3-15 of this code as may be necessary to carry out the purpose of this article, and as may have been specifically delineated within this article.

CHAPTER 227

(S. B. 263 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed January 26, 2018; in effect from passage.]
[Approved by the Governor on January 29, 2018.]

AN ACT to amend and reenact §11-13X-13 of the Code of West Virginia, 1931, as amended, relating to the elimination of film tax credits; preserving rights to all previously issued film tax credits; ceasing operations of the West Virginia Film Office; and transferring certain duties of the West Virginia Film Office to the Division of Tourism.

Be it enacted by the Legislature of West Virginia:
ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-13. Effective date, elimination of film tax credits, preservation of film tax credits earned prior to the sunset date; cessation of the West Virginia Film Office.

(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after December 31, 2007.

(b) The amendments to this article enacted in the year 2009 shall apply to all taxable years beginning after December 31, 2007, and shall apply with retroactive effect with relation to taxable years beginning prior to the date of passage of such amendments.

(c) No tax credits authorized under this article shall be issued following the effective date of legislation establishing this subsection, §11-13X-13(d), and §11-13X-13(e) of this code in the year 2018. Notwithstanding any provision of this article to the contrary, no entitlement to any tax credit under this article may result from, and no credit is available to any person for, expenditures incurred following the effective date of this subsection.

(d) Notwithstanding the provisions of §11-13X-13(c) of this code, film tax credits to which a taxpayer has gained lawful entitlement prior to the effective date of this subsection, may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code. Film tax credits to which a taxpayer has gained lawful entitlement prior to the effective date of this subsection may be transferred in accordance with §11-13X-8 of this code, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.
(e) Effective July 1, 2018, all operations of the West Virginia Film Office shall cease. To the extent necessary to settle, finalize, and conclude business related to outstanding film tax credits issued prior to the effective date of the bill, the Division of Tourism is hereby authorized to administer such duties for that limited purpose.

CHAPTER 228

(Com. Sub. for S. B. 275 - By Senators Clements, Azinger, Beach, Jeffries, Maroney, Prezioso, Romano, Unger, Takubo, Stollings and Cline)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §11-10-5d of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-9d of said code; and to amend and reenact §60-3A-21 of said code, all relating to the excise tax on sales of intoxicating liquors and wine; defining terms; providing that tax collected on sales sourced within the corporate limits of a municipality be remitted to the municipality; providing that the tax collected on sales sourced outside the corporate limits of a municipality be remitted to the county; providing rule-making authority; providing sourcing rules for determining whether tax is collected within or outside of the corporate limits of a municipality; permitting counties to inspect and make copies of certain Tax Commissioner records relating to the collection of tax within the county and the municipalities in the county or the remittance of tax to such county or municipalities; and permitting municipalities to inspect and make copies of certain Tax Commissioner records relating to the collection of tax within the municipality and within the county in which the municipality is located, but outside of the corporate limits of another municipality, and the remittance of tax to such municipality and county.
Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5d. Confidentiality and disclosure of returns and return information.

(a) General rule. — Except when required in an official investigation by the Tax Commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the Tax Commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in §11-10-5d(d) through §11-10-5d(n) of this code, it shall be unlawful for any officer, employee, or agent of this state or of any county, municipality, or governmental subdivision to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration, or return required to be filed with the Tax Commissioner by any article of this chapter imposing any tax administered under this article or by any rule of the Tax Commissioner issued thereunder, or disclosed in any audit or investigation conducted under this article. For purposes of this article, tax returns and return information obtained from the Tax Commissioner pursuant to an exchange of information agreement or otherwise pursuant to the provisions of §11-10-5d(d) through §11-10-5d(n) of this code which is in the possession of any officer, employee, agent, or representative of any local or municipal governmental entity or other governmental subdivision is subject to the confidentiality and disclosure restrictions set forth in this article: Provided, That such officers, employees, or agents may disclose the information in an official investigation, by a local or municipal governmental
authority or agency charged with the duty and responsibility to administer the tax laws of the jurisdiction, into the amount of tax due under any lawful local or municipal tax administered by that authority or agency, or in any proceeding in which the local or municipal governmental subdivision, authority, or agency is a party before a court of competent jurisdiction to collect or ascertain the amount of the tax. Unlawful disclosure of the information by any officer, employee, or agent of any local, municipal, or governmental subdivision is subject to the sanctions set forth in this article.

(b) Definitions. — For purposes of this section:

(1) **Background file document.** — The term “background file document”, with respect to a written determination, includes the request for that written determination, any written material submitted in support of the request and any communication (written or otherwise) between the state Tax Department and any person outside the state Tax Department in connection with the written determination received before issuance of the written determination.

(2) **Disclosure.** — The term “disclosure” means making known to any person in any manner whatsoever a return or return information.

(3) **Inspection.** — The terms “inspection” and “inspected” means any examination of a return or return information.

(4) **Return.** — The term “return” means any tax or information return or report, declaration of estimated tax, claim, or petition for refund or credit or petition for reassessment that is required by, or provided for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto,
including supporting schedules, attachments, or lists which
are supplemental to, or part of, the filed return.

(5) Return information. — The term “return
information” means:

(A) A taxpayer’s identity; the nature, source, or amount
of his or her income, payments, receipts, deductions,
exemptions, credits, assets, liabilities, net worth, tax
liability, tax withheld, deficiencies, overassessments, or tax
payments, whether the taxpayer’s return was, is being, or
will be examined or subject to other investigation or
processing, or any other data received by, recorded by,
prepared by, furnished to, or collected by the Tax
Commissioner with respect to a return or with respect to the
determination of the existence, or possible existence, of
liability (or the amount thereof) or by any person under the
provisions of this article (or any article of this chapter
administered under this article) for any tax, additions to tax,
penalty, interest, fine, forfeiture, or other imposition or
offense; and

(B) Any part of any written determination or any
background file document relating to such written
determination. “Return information” does not include,
however, data in a form which cannot be associated with or
otherwise identify, directly or indirectly, a particular
taxpayer. Nothing in the preceding sentence, or in any other
provision of this code, shall be construed to require the
disclosure of standards used or to be used for the selection
of returns for examination or data used or to be used for
determining such standards.

(6) Tax administration. — The term “tax
administration” means:

(A) The administration, management, conduct,
direction, and supervision of the execution and application
of the tax laws or related statutes of this state and the
development and formulation of state and local tax policy
relating to existing or proposed state and local tax laws and related statutes of this state; and

(B) Includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under the laws of this state and of local governments.

(7) Taxpayer identity. — The term “taxpayer identity” means the name of a person with respect to whom a return is filed, his or her mailing address, his or her taxpayer identifying number, or a combination thereof.

(8) Taxpayer return information. — The term “taxpayer return information” means return information as defined in §11-10-5d(b)(5) of this code which is filed with, or furnished to, the Tax Commissioner by or on behalf of the taxpayer to whom such return information relates.

(9) Written determination. — The term “written determination” means a ruling, determination letter, technical advice memorandum, or letter or administrative decision issued by the Tax Commissioner.

(c) Criminal penalty. — Any officer, employee, or agent (or former officer, employee, or agent) of this state or of any county, municipality, or governmental subdivision who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned for not more than one year, or both, together with costs of prosecution.

(d) Disclosure to designee of taxpayer. — Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this section for any purpose and any period as he or she states in the written waiver. The Tax Commissioner may, subject to such requirements and conditions as he or she may prescribe, thereupon release to designated recipients such taxpayer’s return or other particulars filed under the provisions of the tax articles administered under the provisions of this article, but only to
the extent necessary to comply with a request for
information or assistance made by the taxpayer to such other
person. However, return information shall not be disclosed
to such person or persons if the Tax Commissioner
determines that such disclosure would seriously impair
administration of this state’s tax laws.

(e) Disclosure of returns and return information for use
in criminal investigations. —

(1) In general. — Except as provided in §11-10-5d(e)(3)
of this code, any return or return information with respect to
any specified taxable period or periods shall, pursuant to
and upon the grant of an ex parte order by a federal district
court judge, federal magistrate, or circuit court judge of this
state, under §11-10-5d(e)(2) of this code, be open (but only
to the extent necessary as provided in such order) to
inspection by, or disclosure to, officers and employees of
any federal agency, or of any agency of this state, who
personally and directly engaged in:

(A) Preparation for any judicial or administrative
proceeding pertaining to the enforcement of a specifically
designated state or federal criminal statute to which this
state, the United States, or such agency is or may be a party;

(B) Any investigation which may result in such a
proceeding; or

(C) Any state or federal grand jury proceeding
pertaining to enforcement of such a criminal statute to
which this state, the United States, or such agency is or may
be a party. Such inspection or disclosure shall be solely for
the use of such officers and employees in such preparation,
investigation, or grand jury proceeding.

(2) Application of order. — Any United States attorney,
any special prosecutor appointed under Section 593 of Title
28, United States Code, or any attorney in charge of a
United States justice department criminal division
organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in §11-10-5d(e)(1) of this code. Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in §11-10-5d(e)(1) of this code. Upon the application, the judge or magistrate may grant such order if he or she determines on the basis of the facts submitted by the applicant that:

(A) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(B) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(C) The return or return information is sought exclusively for use in a state or federal criminal investigation or proceeding concerning such act and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(3) The Tax Commissioner may not disclose any return or return information under §11-10-5d(e)(1) of this code if he or she determines and certifies to the court that the disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(f) Disclosure to person having a material interest. — The Tax Commissioner may, pursuant to legislative rules promulgated by him or her, and upon such terms as he or she may require, disclose a return or return information to a person having a material interest in the return or return information: Provided, That such disclosure shall only be made if the Tax Commissioner determines, in his or her discretion, that the disclosure would not seriously impair administration of this state’s tax laws.
(g) *Statistical use.* — This section shall not be construed to prohibit the publication or release of statistics classified to prevent the identification of particular returns and the items thereof.

(h) *Disclosure of amount of outstanding lien.* — If notice of lien has been recorded pursuant to §11-10-12 of this code, the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes written evidence satisfactory to the Tax Commissioner that such person has a right in the property subject to the lien or intends to obtain a right in such property.

(i) *Reciprocal exchange.* — The Tax Commissioner may, pursuant to written agreement, permit the proper officer of the United States, or the District of Columbia, or any other state, or any political subdivision of this state, or his or her authorized representative, who is charged by law with responsibility for administration of a similar tax, to inspect reports, declarations, or returns filed with the Tax Commissioner or may furnish to such officer or representative a copy of any document, provided any other jurisdiction grants substantially similar privileges to the Tax Commissioner or to the Attorney General of this state: Provided, That pursuant to written agreement the Tax Commissioner may provide to the assessor of any county, sheriff of any county, or the mayor of any West Virginia municipality the federal employer identification number of any business being carried on within the jurisdiction of the requesting assessor, sheriff, or mayor. The disclosure shall be only for the purpose of, and only to the extent necessary in, the administration of tax laws: Provided, however, That the information may not be disclosed to the extent that the Tax Commissioner determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(j) *Exchange with municipalities and counties.* —
(1) The Tax Commissioner shall, upon the written request of the mayor or governing body of any West Virginia municipality, allow the duly authorized agent of the municipality to inspect and make copies of the state business and occupation tax return filed by taxpayers of the municipality and any other state tax returns (including, but not limited to, consumers sales and service tax return information and health care provider tax return information) that is reasonably requested by the municipality. Such inspection or copying shall include disclosure to the authorized agent of the municipality for tax administration purposes of all available return information from files of the tax department relating to taxpayers who transact business within the municipality. The Tax Commissioner shall be permitted to inspect or make copies of any tax return and any return information or other information related thereto in the possession of any municipality, or its employees, officers, agents, or representatives, that has been submitted to or filed with the municipality by any person for any tax including, but not limited to, the municipal business and occupation tax, public utility tax, municipal license tax, tax on purchases of intoxicating liquors, license tax on horse racing or dog racing, and municipal amusement tax.

(2) The Tax Commissioner shall, upon the written request of the county commission of a West Virginia county, allow the duly authorized agent of the county to inspect and make copies of the following records related to tax on the sale of intoxicating liquor and wine:

(A) All records of the Tax Commissioner, including available return information, related to the collection of tax in the county or the remittance of tax to the county pursuant to §60-3-9d or §60-3A-21 of this code; and

(B) All records of the Tax Commissioner, including available return information, related to the collection of tax within the corporate limits of a municipality within the county or the remittance of tax to a municipality within the county pursuant to §60-3-9d or §60-3A-21 of this code.
(3) The Tax Commissioner shall, upon the written request of the mayor or governing body of a West Virginia municipality, allow the duly authorized agent of the municipality to inspect and make copies of the following records related to tax on the sale of intoxicating liquor and wine:

(A) All records of the Tax Commissioner, including available return information, related to the collection of tax within the corporate limits of the municipality or the remittance of tax to the municipality pursuant to §60-3-9d and §60-3A-21 of this code;

(B) All records of the Tax Commissioner, including available return information, related to the collection of tax within the county in which the municipality is located but outside the corporate limits of another municipality pursuant to §60-3-9d and §60-3A-21 of this code; and

(C) All records of the Tax Commissioner, including available return information, related to the remittance of tax to the county in which the municipality is located pursuant to §60-3-9d and §60-3A-21 of this code.

(k) Release of administrative decisions. — The Tax Commissioner shall release to the public his or her administrative decisions, or a summary thereof: Provided, That unless the taxpayer appeals the administrative decision to a circuit court or waives in writing his or her rights to confidentiality, any identifying characteristics or facts about the taxpayer shall be omitted or modified to an extent so as to not disclose the name or identity of the taxpayer.

(l) Release of taxpayer information. — If the Tax Commissioner believes that enforcement of the tax laws administered under this article will be facilitated and enhanced thereby, he or she shall disclose, upon request, the names and address of persons:

(A) Who have a current business registration certificate;
(B) Who are licensed employment agencies;
(C) Who are licensed collection agencies;
(D) Who are licensed to sell drug paraphernalia;
(E) Who are distributors of gasoline or special fuel;
(F) Who are contractors;
(G) Who are transient vendors;
(H) Who are authorized by law to issue a sales or use tax exemption certificate;
(I) Who are required by law to collect sales or use taxes;
(J) Who are foreign vendors authorized to collect use tax;
(K) Whose business registration certificate has been suspended or canceled or not renewed by the Tax Commissioner;
(L) Against whom a tax lien has been recorded under §11-10-12 of this code (including any particulars stated in the recorded lien);
(M) Against whom criminal warrants have been issued for a criminal violation of this state’s tax laws; or
(N) Who have been convicted of a criminal violation of this state’s tax laws.

(m) Disclosure of return information to child support enforcement division. —

(1) State return information. — The Tax Commissioner may, upon written request, disclose to the child support enforcement division created by §48A-2-1 et seq. of this code:
(A) Available return information from the master files of the tax department relating to the Social Security account number, address, filing status, amounts, and nature of income and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be enforced; and

(B) Available state return information reflected on any state return filed by, or with respect to, any individual described in §11-10-5d(m)(1)(A) of this code relating to the amount of the individual’s gross income, but only if such information is not reasonably available from any other source.

(2) Restrictions on disclosure. — The Tax Commissioner shall disclose return information under §11-10-5d(m)(1) of this code only for purposes of, and to the extent necessary in, collecting child support obligations from and locating individuals owing such obligations.

(n) Disclosure of names and addresses for purposes of jury selection. — The Tax Commissioner shall, at the written request of a circuit court or the chief judge thereof, provide to the circuit court within 30 calendar days a list of the names and addresses of individuals residing in the county or counties comprising the circuit who have filed a state personal income tax return for the preceding tax year. The list provided shall set forth names and addresses only. The request shall be limited to counties within the jurisdiction of the requesting court.

The court, upon receiving the list or lists, shall direct the jury commission of the appropriate county to merge the names and addresses with other lists used in compiling a master list of residents of the county from which prospective jurors are to be chosen. Immediately after the master list is compiled, the jury commission shall cause the list provided by the Tax Commissioner and all copies thereof to be
destroyed and shall certify to the circuit court and to the Tax Commissioner that the lists have been destroyed.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9d. Tax on purchases of intoxicating liquors inside and outside corporate limits of municipalities.

(a)(1) For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied a tax upon all purchases of intoxicating liquor from state stores or other agencies of the Alcohol Beverage Control Commissioner, of wine from any person licensed to sell wine at retail under the provisions of §60-8-1 et seq. of this code, and of wine from distributors licensed to sell or distribute wine under the provisions of §60-8-1 et seq. of this code. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the commissioner, by the person licensed to sell wine at retail, or by the distributor licensed to sell or distribute wine, as the case may be: Provided, That the tax may not be collected on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of §60-7-1 et seq. of this code: Provided, however, That the tax may not be collected on purchases of intoxicating liquors or wine in the original sealed package for the purpose of resale in the original sealed package if the final purchase of such intoxicating liquors or wine is subject to the tax imposed under this section, under §8-13-7 of this code, or under §60-3A-21 of this code. This section may not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code. For purposes of this article, the term “original sealed package” means an original sealed package as defined in §8-13-7 of this code.
(2) (A) All such tax collected within one mile of the corporate limits of any municipality within the state shall be remitted to such municipality; all other tax collected shall be remitted to the county in which it was collected: Provided, That where the corporate limits of more than one municipality is within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of said municipalities: Provided, however, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

(B) Effective January 1, 2019, all such tax collected on sales sourced within the corporate limits of any municipality within the state shall be remitted to that municipality. All such tax collected on sales sourced outside the corporate limits of any municipality shall be remitted to the county in which the sale is sourced.

(C) When determining whether the tax is collected within the corporate limits of any municipality, a seller shall use the sourcing rules provided in §11-15B-1 et seq. of this code.

(3) Rulemaking. — (A) The Tax Commissioner shall propose rules for promulgation in accordance with the requirements of §29A-3-1 et seq. of this code to provide for the collection of the tax required by this section. The Tax Commissioner may promulgate emergency rules in accordance with §29A-3-15 of this code, as necessary, to carry out the requirements of this section.

(B) The West Virginia Alcohol Beverage Control Commissioner may propose rules for promulgation in accordance with the requirements of §29A-3-1 et seq. of this code to provide for the collection of the tax required by this section. The West Virginia Alcohol Beverage Control Commissioner may promulgate emergency rules in accordance with §29A-3-15 of this code, as necessary, to carry out the requirements of this section.
(b) For purposes of this section, terms have the same meaning as provided in §8-13-7(b) of this code.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-21. Tax on purchases of liquor.

(a) For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied tax upon all purchases of liquor from retail licensees. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the retail licensee.

(b) (1) All such tax collected within the corporate limits of a municipality in this state shall be remitted to such municipality; all such tax collected outside of but within one mile of the corporate limits of any municipality shall be remitted to such municipality; and all other tax so collected shall be remitted to the county in which it was collected: Provided, That where the corporate limits of more than one municipality is within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of such municipalities: Provided, however, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

(2) Effective January 1, 2019, all such tax collected on sales sourced within the corporate limits of any municipality within the state shall be remitted to that municipality. All such tax collected on sales sourced outside the corporate limits of any municipality shall be remitted to the county in which the sale is sourced.

(3) When determining whether the tax is collected on sales within the corporate limits of any municipality, a seller shall use the sourcing rules provided in §11-15B-1 et seq. of this code.
(c) The Tax Commissioner, by appropriate rule promulgated pursuant to §29A-3-1 et seq. of this code, shall provide for the collection of such tax upon all purchases from retail licensees, separation or proration of the same, and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rule shall provide that all such taxes shall be deposited with the state Treasurer and distributed quarterly by the state Treasurer upon warrants of the Auditor payable to the counties and municipalities.

CHAPTER 229

(S. B. 298 - By Senators Blair, Boley, Boso, Drennan, Facemire, Ferns, Gaunch, Maroney, Palumbo, Plymale, Prezioso and Stollings)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §11-4-2 of the Code of West Virginia, 1931, as amended, relating to authorizing county assessors to make separate entries in their landbooks when real property is partly used for exempt, and partly for nonexempt, purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-2. Form of landbooks.

1 The Tax Commissioner shall prescribe a form of landbook and the information and itemization to be entered therein, which shall include separate entries of: (1) All real property or whatever portion thereof in square feet that is owned, used, and occupied by the owner exclusively for residential purposes,
including mobile homes, permanently affixed to the land and
owned by the owner of the land; (2) all real property or
whatever portion thereof in square feet that is owned by an
organization that is exempt from federal income taxes under
26 U. S. C. §501(c)(3) or 501 (c)(4) and used primarily and
immediately for a purpose that is exempt from tax under §11-3-9 of this code; (3) all real property or whatever portion
thereof in square feet that is owned by an organization that is
exempt from federal income taxes under 26 U. S. C.
§501(c)(3) or 501 (c)(4) and that is not used primarily and
immediately for a purpose that is exempt from tax under §11-3-9 of this code; (4) all farms including land used for
agriculture, horticulture, and grazing occupied by the owner or
bona fide tenant; (5) and all other real property. For each entry
there shall be shown: (A) The value of land, the value of
buildings, and the aggregate value; (B) the character and estate
of the owners, the number of acres or lots, and the local
description of the tracts or lots; and (C) the amount of taxes
assessed against each tract or lot for all purposes.

CHAPTER 230

(S. B. 338 - By Senators Blair and Boso)

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §11-21-74 of the Code of West
Virginia, 1931, as amended, relating generally to employer
withholding taxes; changing due date for employers to file
annual reconciliation and withholding statements with Tax
Commissioner to January 31; requiring certain employers to
file withholding return information electronically with the
Tax Commissioner; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:
ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Filing of employer’s withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.

(a) General. — Every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code except as otherwise provided in this section: Provided, That not later than January 31, 2019, and January 31 of each year thereafter, employers and payers shall submit to the Tax Commissioner the annual reconciliation of West Virginia income tax withheld, together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. Notwithstanding the provisions of this section, where the average quarterly amount deducted and withheld by any employer is less than $150 and the aggregate for the calendar year can reasonably be expected to be less than $600, the Tax Commissioner may by rule permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year.

(b) Annual returns and payments of withheld tax of certain domestic and household employees. — Employers of domestic and household employees whose withholdings
of federal income tax are annually paid and reported by the 
employer pursuant to the filing of Schedule H of federal 
form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041 
shall, on or before January 31 next succeeding the end of the 
calendar year for which withholdings are deducted and 
withheld, file an annual withholding return with the Tax 
Commissioner, and annually remit to the Tax 
Commissioner, West Virginia personal income taxes 
deducted and withheld for the employees together with state 
copies of all withholding tax statements reflecting West 
Virginia tax withholding, including, but not limited to, 
forms W-2, W-2G, and 1099, furnished to each employee 
or payee for the preceding calendar year, notwithstanding 
the fact that the employer or payer may have a calendar tax 
year ending on December 31 or a fiscal tax year ending on 
a date other than December 31. The Tax Commissioner may 
promulgate legislative or other rules pursuant to §29A-3-1 et seq. of this code for implementation of this subsection.

(c) Deposit in trust for Tax Commissioner. — Whenever 
any employer fails to collect, truthfully account for, or pay 
over the tax, or to make returns of the tax as required in this 
section, the Tax Commissioner may serve a notice requiring 
the employer to collect the taxes which become collectible 
after service of the notice, to deposit the taxes in a bank 
approved by the Tax Commissioner, in a separate account, 
in trust for and payable to the Tax Commissioner and to 
keep the amount of the tax in the separate account until 
payment over to the Tax Commissioner. The notice remains 
in effect until a notice of cancellation is served by the Tax 
Commissioner.

(d) Accelerated payment. —

(1) Every employer required to deduct and withhold tax 
whose average payment per calendar month for the 
preceding calendar year under §11-21-74(a) of this code 
exceeded $100,000 shall remit the tax attributable to the 
first 15 days of June each year by June 23.
(2) For purposes of complying with §11-21-74(d)(1) of this code, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first 15 days of June or, at the employer’s election, the employer may remit an amount equal to 50 percent of the employer’s liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under §11-21-74(a) of this code for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year and if that amount exceeds $100,000, the employer shall remit the tax attributable to the first 15 days of June each year by June 23, as provided in §11-21-74(d)(2) of this code.

(4) When an employer required to make an advanced payment of withholding tax under §11-21-74(d)(1) of this code makes out its return for the month of June, which is due by July 20, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under §11-21-74(d)(1) of this code.

(e) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer by January 31, following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer’s monthly or quarterly return.
(f) Any employer required to file a withholding return for 50 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code: Provided, That for any tax period beginning after December 31, 2017, any employer that uses a payroll service or is required to file a withholding return for 25 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of $25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.

CHAPTER 231

(S. B. 427 - By Senators Gaunch and Facemire)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §11-6-23 of the Code of West Virginia, 1931, as amended, relating to allowing the Secretary of State to give written notice of delinquency in the payment of certain taxes to certain taxpayers by first class mail.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-23. Lien of taxes; notice; collection by suit.

(a) The amount of taxes and levies assessed under this article shall constitute a debt due the state, county, district, or municipal corporation entitled thereto, and shall be a lien on all property and assets of the taxpayer within the state.
(b) The lien shall attach December 31, following the commencement of the assessment year, and shall be prior to all other liens and charges.

(c) The auditor shall, between May 1 and May 15 of each year, prepare a list of the taxpayers delinquent in the payment of the taxes and levies, setting forth their respective addresses and the amount of state, county, district, and municipal taxes due from each, which list shall be certified by the Auditor to the Board of Public Works and filed in the Office of the Secretary of State.

(d) The Secretary of State shall preserve the list in his or her office, and a certificate from him or her that any taxpayer mentioned in the list is delinquent in the amount of taxes assessed under this article shall be prima facie evidence thereof.

(e) Within 10 days after the filing of the list, the Secretary of State shall give final written notice of any delinquency of $1,000 or greater by registered or certified mail to each of the delinquent taxpayers at his or her, or its, last known post office address; the Secretary of State may give final written notice of any delinquency of less than $1,000 by first class mail to each of the delinquent taxpayers at his or her, or its, last known post office address; and upon the failure of any delinquent taxpayer to pay the taxes within 30 days from the mailing of the notice.

(f) The Attorney General shall enforce the collection of the taxes and levies, and for that purpose he or she may distrain upon any personal property of the delinquent taxpayer, or a sufficient amount thereof to satisfy the taxes, including accrued interest, penalties, and costs.

(g) The Attorney General may also enforce the lien created by this section on the real estate of the delinquent taxpayer by instituting a suit, or suits, in equity in the Circuit Court of Kanawha County.

(h) In the bill filed in the suit it shall be sufficient to allege that the defendant or defendants have failed to pay
the taxes and that each of them justly owes the amount of 
property taxes, levies, and penalties, which amount shall be 
computed up to the first day of the month in which the bill 
was filed.

(i) No defendant may plead that the Secretary of State 
failed to give notice as prescribed by this section.

(j) If, upon the hearing of the suit, it shall appear to the 
court that any defendant has failed to pay the taxes and accrued 
penalties, the court shall enter a decree against the defendant 
for the amount due, and if the decree is not paid within 10 days, 
the court shall enter a decree directing a sale of the real estate 
subject to the lien, or so much as may be necessary to satisfy 
the taxes, including interest, penalties, and costs.

(k) When two or more taxpayers are included in one 
suit, the court shall apportion the cost among them as it may 
deeem just.

CHAPTER 232
(S. B. 441 - By Senators Takubo, Maroney, Stollings, 
Woelfel and Plymale)

[Passed March 7, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §11-27-38 of the Code of West 
Virginia, 1931, as amended, relating to health care provider 
taxes; extending the directed payment program tax on certain 
eligible acute care hospitals for three years; and providing an 
expiration date for the tax.

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

**ARTICLE 27. HEALTH CARE PROVIDER TAXES.**
§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

(a) In addition to the rate of the tax imposed by §11-27-9 and §11-27-15 of this code on providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute care hospitals an additional tax of seventy-five one-hundredths of one percent on the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a directed payment program, or its successor, in accordance with 42 C. F. R. 438.6.

(b) For purposes of this section, the term “eligible acute care hospital” means any inpatient or outpatient hospital conducting business in this state that is not:

(1) A state-owned or -designated facility;

(2) A critical access hospital, designated as a critical access hospital after meeting all federal eligibility criteria;

(3) A licensed free-standing psychiatric or medical rehabilitation hospital; or

(4) A licensed long-term acute care hospital.

(c) There is continued a special revenue account in the State Treasury designated the Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under §11-10-1 et seq. of this code, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the Special Revenue Fund and do not revert to general revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section in an account to be designated as the Eligible Acute Care Provider Enhancement Account. The amounts collected shall be deposited, within 15 days after receipt by the Tax
Commissioner, into the Eligible Acute Care Provider Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement Account within the Medicaid State Share Fund may only be used to support West Virginia Medicaid and the directed payment program, or its successor, in accordance with 42 C. F. R. 438.6 and as otherwise set forth in this section.

(d) The imposition and collection of taxes imposed by this section is suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting toward state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, agency of office of state or federal government that has the effect of disqualifying the tax from counting toward state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) If the tax payments remitted by the eligible acute care hospitals are not used to effectuate the provisions of this article.

(e) Any funds remaining in the Eligible Acute Care Provider Enhancement Account as of June 30, 2018, and on June 30 of each year thereafter, shall be transferred to the West Virginia Medical Services Fund after that June 30 but no later than the next ensuing September 30. These funds shall be used during the state fiscal year in which they were transferred at the discretion of the Bureau for Medical Services.
(f) The changes to the tax rate in this section enacted in the 2017 regular session are effective July 1, 2017.

(g) The tax imposed by this section expires on and after June 30, 2021, unless otherwise extended by the Legislature.

CHAPTER 233

(Com. Sub. for S. B. 461 - By Senators Ferns and Cline)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §11-14C-31 of the Code of West Virginia, 1931, as amended, relating to petitions for refunds of motor fuel excise tax by certain taxpayers; extending time periods for certain taxpayers to file petition for refunds; and maintaining current time period to file petition for refunds of taxes paid on motor fuel sold for certain purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to §11-14C-9(c) or §11-14C-9(d) of this code shall present to the commissioner a petition for refund in the form required by the commissioner and provide the information required by the commissioner. The Tax Commissioner may require the petitioner to provide the original or duplicate original sales slips or invoices from the distributor or producer or retail dealer, as the case may be, showing the amount of the purchases, together with evidence of payment thereof, and a statement stating how the motor fuel was used: Provided, That sales slips or invoices marked
“duplicate” are not acceptable: Provided, however, That certified copies of sales slips or invoices are acceptable: Provided further, That copies of sales slips and invoices may be used with any application for refund made under authority of §11-14C-9(c)(15) of this code when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes: And provided further, That a refund claim made under the authority of §11-14C-9(d)(1) of this code shall be accompanied by such verification as prescribed by the Tax Commissioner: And provided further, That billing statements and electronic invoices are acceptable in lieu of original invoices at the discretion of the Tax Commissioner: And provided further, That the person claiming a refund under §11-14C-9(c) or §11-14C-9(d) of this code shall retain for at least three years following the postmark date of the application for refund a copy of the invoices, sales slips, and billing statements for which the refund was claimed.

(b) Any person claiming a refund pursuant to §11-14C-30 of this code shall file a petition in writing with the commissioner. The petition shall be in the form and with supporting records as required by the commissioner and made under the penalty of perjury.

(c) The right to receive any refund under the provisions of this section is not assignable and any assignment thereof is void and of no effect. No payment of any refund may be made to any person other than the original person entitled to claim the refund except as otherwise expressly provided in this article. The commissioner shall cause a refund to be made under the authority of this section only when the claim for refund is filed with the commissioner within the following time periods:

(1) A petition for refund under §11-14C-30 of this code, other than for evaporation loss, shall be filed with the commissioner within three years from the end of the month in which: (A) The tax was erroneously or illegally paid; (B)
the gallons were exported or lost by casualty; or (C) a change of rate took effect;

(2) A petition for refund under §11-14C-30 of this code for evaporation loss shall be filed within three years from the end of the year in which the evaporation occurred;

(3) A petition for refund under §11-14C-9(c) or §11-14C-9(d) of this code shall be filed with the commissioner within one year from the end of the calendar year for purchases of motor fuel during the calendar year: Provided, That any application for refund made under authority of §11-14C-9(c)(15) of this code when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes shall be filed within 12 months from the month of purchase or delivery of the motor fuel: Provided, however, That all persons authorized to claim a refundable exemption under the authority of §11-14C-9(c)(1) through §11-14C-9(c)(6) of this code and §11-14C-9(d)(1) through §11-14C-9(d)(6) of this code shall do so no later than December 31 for the purchases of motor fuel made during the preceding fiscal year ending June 30: Provided further, That a petition for refund under §11-14C-9(d)(10) of this code shall be filed with the commissioner on or before the last day of January, April, July, and October for purchases of motor fuel during the immediately preceding calendar quarter.

(d) Any petition for a refund not timely filed is not construed to be or constitute a moral obligation of the State of West Virginia for payment. Every petition for refund is subject to the provisions of §11-10-14 of this code.

(e) The commissioner may make any investigation considered necessary before refunding to a person the tax levied by §11-14C-5 of this code. The commissioner may also subject to audit the records related to a refund of the tax levied by §11-14C-5 of this code.
AN ACT to amend and reenact §7-11B-3, §7-11B-4, §7-11B-7 and §7-11B-8 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Tax Increment Financing Act; giving Class III municipalities the authority to exercise the powers under the act, and requiring certain reporting to certain levying bodies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

(a) General. — When used in this article, words and phrases defined in this section have the meanings ascribed to them in this section unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

(b) Words and phrases defined. —

“Agency” includes a municipality, a county or municipal development agency established pursuant to authority granted in §7-12-1 of this code, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity or the Division of Highways.
“Base assessed value” means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding the effective date of the order or ordinance creating and establishing the development or redevelopment district: Provided, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the base assessed value.

“Blighted area” means an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. “Blighted area” includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any
area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

“Commissioner of Highways” means the Commissioner of the Division of Highways.

“Conservation area” means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

“County commission” means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I, Class II or Class III municipality in this state.

“Current assessed value” means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: Provided, That for any development or redevelopment district approved after the effective date of the amendments
to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

“Development office” means the West Virginia Development Office created in §5B-2-1 of this code.

“Development project” or “redevelopment project” means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for
the preparation of any sites and making any land or
improvements acquired in the project area available, by sale
or lease, for public housing or for development,
redevelopment or rehabilitation by private enterprise for
commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a
development or redevelopment district designed to increase
or enhance the development of commerce, industry or
housing within the development project area; or

(E) Any other projects the county commission or the
agency deems appropriate to carry out the purposes of this
article.

“Development or redevelopment district” means an area
proposed by one or more agencies as a development or
redevelopment district which may include one or more
counties, one or more municipalities or any combination
thereof, that has been approved by the county commission
of each county in which the project area is located if the
project is located outside the corporate limits of a
municipality, or by the governing body of a municipality if
the project area is located within a municipality, or by both
the county commission and the governing body of the
municipality when the development or redevelopment
district is located both within and without a municipality.

“Division of Highways” means the state Department of
Transportation, Division of Highways.

“Economic development area” means any area or
portion of an area within the boundaries of a development
or redevelopment district located within the territorial limits
of a municipality or county that is neither a blighted area nor
a conservation area and for which the county commission
finds that development or redevelopment will not be solely
used for development of commercial businesses that will
unfairly compete in the local economy and that
development or redevelopment is in the public interest because it will:

(A) Discourage commerce, industry or manufacturing from moving their operations to another state;

(B) Result in increased employment in the municipality or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of the county or municipality.

“Governing body of a municipality” means the city council of a Class I, Class II or Class III municipality in this state.

“Incremental value”, for any development or redevelopment district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value and the incremental value will be negative if the current value is less than the base assessed value.

“Includes” and “including”, when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

“Intergovernmental agreement” means any written agreement that may be entered into by and between two or more county commissions, or between two or more municipalities, or between a county commission and a municipality, in the singular and the plural, or between two or more government entities and the Commissioner of Highways: Provided, That any intergovernmental agreement shall not be subject to provisions governing intergovernmental agreements set forth in other provisions of this code, including, but not limited to, §8-23-1 et seq. of this code, but shall be subject to the provisions of this article.
“Local levying body” means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

“Obligations” or “tax increment financing obligations” means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

“Order” means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

“Ordinance” means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in §8-1-1 et seq. of this code.

“Payment in lieu of taxes” means those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project which revenues, according to the development or redevelopment project or plan, are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable real and tangible personal property in the area selected for the development or redevelopment project exceeds the total base assessed value of all taxable real and tangible personal property in the development or redevelopment district until the designation is terminated as provided in this article.

“Person” means any natural person, and any corporation, association, partnership, limited partnership,
limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

“Private project” means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment district.

“Project” means any capital improvement, facility or both, as specifically set forth and defined in the project plan, requiring an investment of capital including, but not limited to, extensions, additions or improvements to existing facilities, including water or wastewater facilities, and the remediation of contaminated property as provided for in §22-22-1 et seq. of this code, but does not include performance of any governmental service by a county or municipal government.

“Project area” means an area within the boundaries of a development or redevelopment district in which a development or redevelopment project is undertaken as specifically set forth and defined in the project plan.

“Project costs” means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. “Project costs” include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking
and landscaping, the acquisition of equipment and site
clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an
interest paid to holders of evidences of indebtedness issued
to pay for project costs, all costs of issuance and any
redemption premiums, credit enhancement or other related
costs;

(C) Real property assembly costs, meaning any deficit
incurred resulting from the sale or lease as lessor by the
county commission of real or personal property having a tax
situs within a development or redevelopment district for
consideration that is less than its cost to the county
commission;

(D) Professional service costs including, but not limited
to, those costs incurred for architectural planning,
engineering and legal advice and services;

(E) Imputed administrative costs including, but not
limited to, reasonable charges for time spent by county
employees or municipal employees in connection with the
implementation of a project plan;

(F) Relocation costs including, but not limited to, those
relocation payments made following condemnation and job
training and retraining;

(G) Organizational costs including, but not limited to,
the costs of conducting environmental impact and other
studies and the costs of informing the public with respect to
the creation of a development or redevelopment district and
the implementation of project plans;

(H) Payments made, in the discretion of the county
commission or the governing body of a municipality, which
are found to be necessary or convenient to creation of
development or redevelopment districts or the
implementation of project plans; and
(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

“Project developer” means any person who engages in the development of projects in the state.

“Project plan” means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and this chapter or §8-1-1 et seq. of this code.

“Real property” means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

“Redevelopment area” means an area designated by a county commission or the governing body of a municipality in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefitted by the proposed redevelopment project located within the development or redevelopment district or land contiguous thereto.

“Redevelopment plan” means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment
costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment area. Each redevelopment plan shall conform to the requirements of this article.

“Tax increment” means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment district exceeds the base assessed value of the property.

“Tax increment financing fund” means a separate fund for a development or redevelopment district established by the county commission or governing body of the municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

“This code” means the Code of West Virginia, 1931, as amended by the Legislature.

“Total ad valorem property tax regular levy rate” means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

§7-11B-4. Powers generally.

In addition to any other powers conferred by law, a county commission or governing body of a Class I, Class II or Class III municipality may exercise any powers necessary and convenient to carry out the purpose of this article, including the power to:
(1) Create development and redevelopment areas or districts and to define the boundaries of those areas or districts;

(2) Cause project plans to be prepared, to approve the project plans, and to implement the provisions and effectuate the purposes of the project plans;

(3) Establish tax increment financing funds for each development or redevelopment district;

(4) Issue tax increment financing obligations and pledge tax increments and other revenues for repayment of the obligations;

(5) Deposit moneys into the tax increment financing fund for any development or redevelopment district;

(6) Enter into any contracts or agreements, including, but not limited to, agreements with project developers, consultants, professionals, financing institutions, trustees and bondholders determined by the county commission to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(7) Receive from the federal government or the state loans and grants for, or in aid of, a development or redevelopment project and to receive contributions from any other source to defray project costs;

(8) Exercise the right of eminent domain to condemn property for the purposes of implementing the project plan. The rules and procedures set forth in §54-1-1 et seq. of this code shall govern all condemnation proceedings authorized in this article;

(9) Make relocation payments to those persons, businesses, or organizations that are displaced as a result of carrying out the development or redevelopment project;
(10) Clear and improve property acquired by the county commission pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of the property;

(11) Cause parks, playgrounds or water, sewer or drainage facilities or any other public improvements, including, but not limited to, fire stations, community centers and other public buildings, which the county commission is otherwise authorized to undertake to be laid out, constructed or furnished in connection with the development or redevelopment project. When the public improvement of the county commission is to be located, in whole or in part, within the corporate limits of a municipality, the county commission shall consult with the mayor and the governing body of the municipality regarding the public improvement and shall pay for the cost of the public improvement from the tax increment financing fund;

(12) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon or discontinue public ways and construct sidewalks in, or adjacent to, the project area: Provided, That when the public way or sidewalk is located within a municipality, the governing body of the municipality shall consent to the same and if the public way is a state road, the consent of the commissioner of highways shall be necessary;

(13) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer or drainage facilities and similar improvements to be constructed within the project area for the particular use of the development or redevelopment district or those dwelling or working in it;

(14) Construct, or cause to be constructed, any capital improvements of a public nature;
(15) Construct capital improvements to be leased or sold to private entities in connection with the goals of the development or redevelopment project;

(16) Cause capital improvements owned by one or more private entities to be constructed within the development or redevelopment district;

(17) Designate one or more official or employee of the county commission to make decisions and handle the affairs of development and redevelopment project areas or districts created by the county commission pursuant to this article;

(18) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to existing ordinances and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(19) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish exceptions to existing orders and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(20) Sell, mortgage, lease, transfer or dispose of any property or interest therein, by contract or auction, acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the project plan;

(21) Expend project revenues as provided in this article;

(22) Enter into one or more intergovernmental agreements or memorandums of understanding with the Commissioner of Highways or with other county commissions or municipalities regarding development or redevelopment districts;
(23) Designate one or more officials or employees of the county commission or municipality that created the development or redevelopment district to sign documents, to make decisions and handle the affairs of the development or redevelopment district. When two or more county commissions, or municipalities, or any combination thereof, established the development or redevelopment district, the government entities shall enter into one or more intergovernmental agreements regarding administration of the development or redevelopment district and the handling of its affairs; and

(24) Do all things necessary or convenient to carry out the powers granted in this article.

§7-11B-7. Creation of a development or redevelopment or district.

(a) County commissions and the governing bodies of Class I, Class II or Class III municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment district and designate the boundaries of the district: Provided, That a district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment district shall then hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment district and its proposed boundaries.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment district and, when a development or redevelopment project plan is being
proposed, the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the director of the Development Office and to the chief executive officer of all other local levying bodies having the power to levy taxes on real and tangible personal property located within the proposed development or redevelopment district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to create the development or redevelopment district and, if applicable, the development or redevelopment project plan and proposed tax increment financing obligations.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the boundaries of the development or redevelopment district, the development or redevelopment project plan, or both, and submit the same to the director of the Development Office for his or her review and approval. The director, within sixty days after receipt of the application, shall approve the application as submitted, reject the application or return the application to the county commission or governing body of the municipality for further development or review in accordance with instructions of the director of the Development Office. A development or redevelopment district or development or redevelopment project plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the executive director of the Development Office.

(d) Upon approval of the application by the Development Office, the county commission may enter an order and the governing body of the municipality proposing the district or development or redevelopment project plan may adopt an ordinance, that:
(1) Describes the boundaries of a development or redevelopment district sufficiently to identify with ordinary and reasonable certainty the territory included in the district, which boundaries shall create a contiguous district;

(2) Creates the development or redevelopment district as of a date provided in the order or ordinance;

(3) Assigns a name to the development or redevelopment district for identification purposes.

(A) The name may include a geographic or other designation, shall identify the county or municipality authorizing the district and shall be assigned a number, beginning with the number one.

(B) Each subsequently created district in the county or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the development or redevelopment district will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment or any combination thereof;

(5) Approves the development or redevelopment project plan, if applicable;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body of the municipality, for the benefit of the development or redevelopment district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the county commission or the governing body of the municipality; and
(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment district shall be assessed, collected and allocated in the following manner, commencing upon the date of adoption of such order or ordinance and continuing for so long as any tax increment financing obligations are payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(A) For each tax year, the county assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment district;

(B) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the district that are attributable to the lower of the base assessed value or the current assessed value of real and tangible personal property located in the development project area shall be allocated to the levying bodies in the same manner as applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment district. Any levying body having a development or redevelopment district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and
(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in §11-8-1 et seq. of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment district or land contiguous thereto.

(f) Notwithstanding subsection (d) of this section, a county commission may not enter an order approving a development or redevelopment project plan unless the county commission expressly finds and states in the order that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(g) Notwithstanding subsection (d) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or redevelopment district any portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal consent of the governing body of such municipality.

(i) A tax increment financing plan that has been approved by a county commission or the governing body of a municipality may be amended by following the procedures set forth in this article for adoption of a new development or redevelopment project plan.
(j) The county commission may modify the boundaries of the development or redevelopment district, from time to time, by entry of an order modifying the order creating the development or redevelopment district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment district, from time to time, by amending the ordinance establishing the boundaries of the district.

(l) Before a county commission or the governing body of a municipality may amend such an order or ordinance, the county commission or municipality shall give the public notice, hold a public hearing and obtain the approval of the director of the Development Office, following the procedures for establishing a new development or redevelopment district. In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

§7-11B-8. Project plan — approval.

(a) The county commission or municipality creating the district shall cause the preparation of a project plan for each development or redevelopment district and the project plan shall be adopted by order of the county commission, or ordinance adopted by the governing body of the municipality, after it is approved by the executive director of the Development Office. This process shall conform to the procedures set forth in this section.

(b) Each project plan shall include:

(1) A statement listing the kind, number and location of all proposed public works or other improvements within the district and on land outside but contiguous to the district;
(2) A cost-benefit analysis showing the economic impact of the plan on each levying body that is at least partially within the boundaries of the development or redevelopment district. This analysis shall show the impact on the economy if the project is not built and is built pursuant to the development or redevelopment plan under consideration. The cost-benefit analysis shall include a fiscal impact study on every affected levying body and sufficient information from the developer for the agency, if any proposing the plan, the county commission be asked to approve the project and the Development Office to evaluate whether the project as proposed is financially feasible;

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A description of the methods of financing all estimated project costs, including the issuance of tax increment obligations and the time when the costs or monetary obligations related thereto are to be incurred;

(6) A certification by the county assessor of the base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: Provided, That if such certification is made during the months of January or February of each year, the county assessor may certify an estimated base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: Provided, however, That prior to issuance of tax increment obligations, the county assessor shall certify a final base assessed value for the estimated base assessed value permitted by this section;

(7) The type and amount of any other revenues that are expected to be deposited to the tax increment financing fund of the development or redevelopment district;

(8) A map showing existing uses and conditions of real property in the development or redevelopment district;
(9) A map of proposed improvements and uses in the district;

(10) Proposed changes of zoning ordinances, if any;

(11) Appropriate cross-references to any master plan, map, building codes and municipal ordinances or county commission orders affected by the project plan;

(12) A list of estimated nonproject costs;

(13) A statement of the proposed method for the relocation of any persons, businesses or organizations to be displaced;

(14) A certificate from the executive director of the workers’ compensation commission, the commissioner of the Bureau of Employment Programs and the State Tax Commissioner that the project developer is in good standing with the workers’ compensation commission, the Bureau of Employment Programs and the state Tax Division; and

(15) A certificate from the sheriff of the county or counties in which the development or redevelopment district is located that the project developer is not delinquent on payment of any real and personal property taxes in such county.

(c) If the project plan is to include tax increment financing, the tax increment financing portion of the plan shall set forth:

(1) The amount of indebtedness to be incurred pursuant to this article;

(2) An estimate of the tax increment to be generated as a result of the project;

(3) The method for calculating the tax increment, which shall be in conformance with the provisions of this article,
together with any provision for adjustment of the method of calculation;

(4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the tax increment financing; and

(5) Any other provisions as may be deemed necessary in order to carry out any tax increment financing to be used for the development or redevelopment project.

(d) If less than all of the tax increment is to be used to fund a development or redevelopment project or to pay project costs or retire tax increment financing, the project plan shall set forth the portion of the tax increment to be deposited in the tax increment financing fund of the development or redevelopment district and provide for the distribution of the remaining portion of the tax increment to the levying bodies in whose jurisdiction the district lies.

(e) The county commission or governing body of the municipality that established the tax increment financing fund shall hold a public hearing at which interested parties shall be afforded a reasonable opportunity to express their views on the proposed project plan being considered by the county commission or the governing body of the municipality.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with section two, article three, chapter fifty-nine of this code.

(2) At least 30 days prior to this publication, a copy of the notice and a copy of the proposed project plan shall be sent by first-class mail to the chief executive officer of all other levying bodies having the power to levy taxes on property located within the proposed development or redevelopment district.

(f) Approval by the county commission or the governing body of a municipality of an initial
development or redevelopment project plan must be within one year after the date of the county assessor’s certification required by subdivision (6), subsection (b) of this section: Provided, That additional development or redevelopment project plans may be approved by the county commission or the governing body of a municipality in subsequent years, so long as the development or redevelopment district continues to exist. The approval shall be by order of the county commission or ordinance of the municipality, which shall contain a finding that the plan is economically feasible.

CHAPTER 235

(Com. Sub. for H. B. 4022 - By Delegates Hamrick, Butler, Barrett, Dean, Fast, Hollen, Lovejoy and Queen)

[Passed March 2, 2018; in effect ninety days from passage.] [Approved by the Governor on March 20, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9p, relating to providing an exemption from the consumer sales and service tax for purchases of certain services and tangible personal property sold for the repair, remodeling and maintenance of aircraft operated under a fractional ownership program; defining terms; specifying a method for claiming exemption; authorizing emergency rules and promulgation of legislative rules; and establishing the effective date of the section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.
§11-15-9p. Exemption for purchases of services and tangible personal property sold for the repair, remodeling and maintenance of aircraft operated under a fractional ownership program.

(a) The following sales are exempt from the consumers sales and service tax: Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated under a fractional ownership program, or to an engine or other component part of an aircraft operated under a fractional ownership program; sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft operated under a fractional ownership program, as part of the repair, remodeling or maintenance service; and sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for an aircraft operated under a fractional ownership program, or used exclusively in combination with the purposes specified in this subsection and the purposes specified in §11-15-9(a)(33) of this code.

(b) Any person having a right or claim to any exemption set forth in this section shall: First pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or, as provided in §11-15-9d and §11-15a-3d of this code, give to the vendor his or her West Virginia direct pay permit number: Provided, That a person having a right or claim to the exemption set forth in this section may apply to the Tax Commissioner for permission to use an exemption certificate. Upon the granting of such permission, a person having a right or claim to the exemption set forth in this section may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner.
(c) For purposes of this section, “fractional ownership program” means any system of aircraft ownership and exchange that consists of all of the following:

(1) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners;

(2) Two or more airworthy aircraft;

(3) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;

(4) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner;

(5) A dry-lease aircraft exchange arrangement among all of the fractional owners; and

(6) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

(d) The tax commissioner shall promulgate emergency rules and shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to establish eligibility requirements for the exemption established by this section.

(e) The provisions of this section shall apply to sales made on and after September 1, 2018.
CHAPTER 236

(Com. Sub. for H. B. 4135 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed February 9, 2018; in effect from passage.]
[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

Article 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2016, but prior to January 1, 2018, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2018, shall be given any effect.
(b) The term “Internal Revenue Code of 1986” means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year 2018 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2018, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 237

(H. B. 4146 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed February 9, 2018; in effect from passage.]
[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; providing rule for
determining number of personal exemptions; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2016, but prior to January 1, 2018, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2018, may be given any effect.

(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to those sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) Surtax. — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year 2017 are retroactive to the extent allowable under federal income tax law. With respect to
taxable years that began prior to January 1, 2018, the law in
effect for each of those years shall be fully preserved as to
that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a
low income senior citizen for property tax paid on his or her
homestead in this state, the term “laws of the United States”
as used in subsection (a) of this section means and includes
the term “low income” as defined in subsection (b), section
twenty-one of this article and as reflected in the poverty
guidelines updated periodically in the federal register by the
U.S. Department of Health and Human Services under the
authority of 42 U.S.C. § 9902(2).

(f) For taxable years beginning on and after January 1,
2018, whenever §11-21-1 et seq. of this code refers to “each
exemption for which he or she is entitled to a deduction for
the taxable year for federal income tax purposes” this phrase
means the exemption the person would have been allowed
to claim for the taxable year had the federal income tax law
not been amended to eliminate the personal exemption for
federal tax years beginning on or after January 1, 2018.

CHAPTER 238

(Com. Sub. for H. B. 4157 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed March 9, 2018; in effect from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §11-15-9 of the Code of West
Virginia, 1931, as amended, relating to the elimination of the
refundable exemption for road construction contractors;
prohibiting the transfer of revenues collected from the state’s
consumers sales and service tax and the state’s use tax to the State Road Fund; updating references to certain entities; updating references to the code; removing references to obsolete dates; and specifying the effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the Higher Education Policy Commission or the Council for Community and Technical College Education for universities and colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States,
including agencies of federal, state or local governments for
distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of
Motor Vehicles and which are subject to the tax imposed by
§11-15-3c of this code or like tax;

(5) Sales of property or services to churches which make
no charge whatsoever for the services they render:
Provided, That the exemption granted in this subdivision
applies only to services, equipment, supplies, food for meals
and materials directly used or consumed by these
organizations and does not apply to purchases of gasoline or
special fuel;

(6) Sales of tangible personal property or services to a
corporation or organization which has a current registration
certificate issued under §11-12-1 et seq. of this code, which
is exempt from federal income taxes under Section
501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
amended, and which is:

(A) A church or a convention or association of churches
as defined in Section 170 of the Internal Revenue Code of
1986, as amended;

(B) An elementary or secondary school which maintains
a regular faculty and curriculum and has a regularly enrolled
body of pupils or students in attendance at the place in this
state where its educational activities are regularly carried
on;

(C) A corporation or organization which annually
receives more than one half of its support from any
combination of gifts, grants, direct or indirect charitable
contributions or membership fees;

(D) An organization which has no paid employees and
its gross income from fundraisers, less reasonable and
necessary expenses incurred to raise the gross income (or
the tangible personal property or services purchased with
the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This
term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in §11-14C-1 et seq. of this code;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner’s account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: Provided, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from
availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1 et seq. of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: Provided, however, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes;
(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours: Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-month period for the purposes of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character”;

(15) Sales of property or services to a school which has approval from the Higher Education Policy Commission or the Council for Community and Technical College Education to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable as provided in §§11-15-18, §11-15-18b and §11-14C-1 et seq. of this code;
(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state Lottery Commission, under the provisions of §29-22-1 et seq. of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 et seq. of this code to lessees for a period of thirty or more consecutive days;

(18) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter 29A of this code by the Tax Commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, et seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U. S. C. §1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(21) Sales of electronic data processing services and related software: Provided, That, for the purposes of this subdivision, “electronic data processing services” means:

(A) The processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which
data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(24) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption
267 of food products for a specific period of time without respect
268 to the amount of food product actually consumed by the
269 particular individual contracting for the sale and no money
270 is paid at the time the food product is served or consumed;

271 (C) Food purchased or sold by a charitable or private
272 nonprofit organization, a nonprofit organization or a
273 governmental agency under a program to provide food to
274 low-income persons at or below cost;

275 (D) Food sold by a charitable or private nonprofit
276 organization, a nonprofit organization or a governmental
277 agency under a program operating in West Virginia for a
278 minimum of five years to provide food at or below cost to
279 individuals who perform a minimum of two hours of
280 community service for each unit of food purchased from the
281 organization;

282 (E) Food sold in an occasional sale by a charitable or
283 nonprofit organization, including volunteer fire departments
284 and rescue squads, if the purpose of the sale is to obtain
285 revenue for the functions and activities of the organization
286 and the revenue obtained is actually expended for that
287 purpose;

288 (F) Food sold by any religious organization at a social
289 or other gathering conducted by it or under its auspices, if
290 the purpose in selling the food is to obtain revenue for the
291 functions and activities of the organization and the revenue
292 obtained from selling the food is actually used in carrying
293 out those functions and activities: Provided, That purchases
294 made by the organizations are not exempt as a purchase for
295 resale; or

296 (G) Food sold by volunteer fire departments and rescue
297 squads that are exempt from federal income taxes under
298 Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
299 1986, as amended, when the purpose of the sale is to obtain
300 revenue for the functions and activities of the organization
and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: Provided, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the Constitution of this state;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or §11-15A-1 et seq. of this code, or pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer’s immediate family who is not otherwise engaged
in making retail sales of tangible personal property; and
sales of livestock sold at public sales sponsored by breeders
or registry associations or livestock auction markets:
Provided, That the exemptions allowed by this subdivision
may be claimed without presenting or obtaining exemption
certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture
exhibitors for exhibition if the sale of tickets or the charge
for admission to the exhibition of the film is subject to the
tax imposed by this article and sales of coin-operated video
arcade machines or video arcade games to a person engaged
in the business of providing the machines to the public for a
charge upon which the tax imposed by this article is remitted
to the Tax Commissioner: Provided, That the exemption
provided in this subdivision may be claimed by presenting
to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling and
maintenance services when the services are to an aircraft
operated by a certified or licensed carrier of persons or
property, or by a governmental entity, or to an engine or
other component part of an aircraft operated by a
certificated or licensed carrier of persons or property, or by
a governmental entity and sales of tangible personal
property that is permanently affixed or permanently
attached as a component part of an aircraft owned or
operated by a certificated or licensed carrier of persons or
property, or by a governmental entity, as part of the repair,
remodeling or maintenance service and sales of machinery,
tools or equipment directly used or consumed exclusively in
the repair, remodeling or maintenance of aircraft, aircraft
engines or aircraft component parts for a certificated or
licensed carrier of persons or property or for a governmental
entity;

(34) Charges for memberships or services provided by
health and fitness organizations relating to personalized
fitness programs;
(35) Sales of services by individuals who babysit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed $5,000 in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(37) Commissions received by a manufacturer’s representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the State of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one
purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any
other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed $3,000: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows or any video or audio taped presentations or the sale or leasing of video or audio tapes, air shows or any other public meeting, display or show other than those specified herein: Provided, however, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to §29A-3-1 et seq. of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: Provided further, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the
association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled Wonderful West Virginia and by the Division of Culture and History of the magazine currently entitled Goldenseal and the journal currently entitled West Virginia History;

(44) Sales of soap to be used at car wash facilities;
Commissions received by a travel agency from an out-of-state vendor;

The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code give to the vendor his or her West Virginia direct pay permit number.
The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

1. Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

2. Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

3. Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

4. Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

5. Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic
violence shelter or an emergency children and youth shelter
if the shelter is owned, managed, developed or operated by
an organization qualified under Section 501(c)(3) or (c)(4)
of the Internal Revenue Code of 1986, as amended.

(c) Effective date. – The amendments to this section in
2018 shall take effect beginning July 1, 2018, and apply to
sales made on and after that date: Provided, That the
amendments to subdivision (6), subsection (b) of this
section takes effect upon passage of this act of the
Legislature and shall be construed to prohibit on and after
January 1, 2018, all transfers to the State Road Fund
established in the State Treasury pursuant to section fifty-
two, article six of the Constitution, of the taxes imposed by
§11-15-1 et seq. and §11-15A-1 et seq. of this code.

CHAPTER 239

(Com. Sub. for H. B. 4522 - By Delegate Nelson)
[By Request of the Tax Division]

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-10-5dd,
relating to allowing certain tax information to be shared with
the State Auditor and the chief executive officer of the
Enterprise Resource Planning Board and of certain other
agencies pursuant to written agreements; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION
ACT.
§11-10-5dd. Disclosure of certain tax information pursuant to written agreements with state agencies purchasing or leasing goods or services or the Enterprise Resource Planning Board to facilitate purchasing; and the State Auditor.

(a) General. – Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into written agreements with other agencies of this state, as provided in this section, to share certain tax information, as defined in this section.

(b) Contracts with the state. – Notwithstanding any provision of this article to the contrary, the Tax Commissioner may enter into a written agreement with the chief executive officer of an agency with authority to award public contracts for the purchase or lease of goods or services, or with the chief executive officer of the Enterprise Resource Planning Board to facilitate purchasing or leasing of goods and service, to disclose whether a vendor, or prospective vendor, is in good standing before a public contract is awarded or renewed.

(c) State Auditor. – The State Auditor is authorized to request from the Tax Commissioner, and the Tax Commissioner shall provide to the State Auditor, confirmation whether a vendor is in good standing with the Tax Commissioner. When the State Auditor provides the Tax Commissioner an electronic file, the Tax Commissioner will determine in a timely manner whether the vendor is in good standing and, if the vendor is not in good standing, electronically advise the State Auditor of the amount of taxes, interest and additions to tax that are then due and owing by that vendor to the Tax Commissioner that should be offset, if any, or that the vendor needs to contact the Tax Commissioner’s office to resolve the issue that prevents the vendor from being in good standing, before the vendor will be paid by the state.

(d) As used in §11-10-5dd of this code, the term “good standing” means that the person has a current business
registration certificate under §11-12-1 et seq. of this code, has filed all required returns for taxes administered under §11-10-1 et seq. and has paid all taxes shown to be due on those returns. A person is in “good standing” even though the person may be paying taxes under a payment plan provided the person is in compliance with the terms of the written payment plan agreement; or is contesting an assessment for one or more taxes administered under §11-10-1 et seq. before the Office of Tax Appeals or in a court of this state.

(e) Exchanges of information under §11-10-5dd of this code shall occur pursuant to memorandums of understanding executed by the Tax Commissioner and the chief executive officer of any agency to award public contracts for the purchase or lease of goods or services; the chief executive officer of the Enterprise Resource Planning Board; or the State Auditor, as the case may be. These memorandums may be amended from time to time.

CHAPTER 240


[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §11-13BB-3, §11-13BB-4 and §11-13BB-14 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia innovative mine safety technology tax credit act; requiring that proximity detection systems, cameras and underground safety shelters and the refurbishing thereof be on the list of approved innovative mine safety technology; providing exception to
intent of the Legislature as to description of what should be
on the list; extending the tax credit authorized for qualified
investment in eligible safety property under the act; and
correcting cross-references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE
SAFETY TECHNOLOGY TAX CREDIT ACT.


(a) Any term used in this article has the meaning
ascribed by this section unless a different meaning is clearly
required by the context of its use or by definition in this
article.

(b) For purposes of this article, the term:

(1) “Certified eligible safety property” means eligible
safety property in which an eligible taxpayer has made
qualified investment for which credit has been certified
under this article.

(2) “Coal mining company” means:

(A) A person subject to tax imposed on the severance of
coal by section three, article thirteen-a of this chapter; or

(B) A person working as a contract miner of coal,
mining coal in this state, under contract with a person
subject to tax imposed on the severance of coal by section
three, article thirteen-a of this chapter.

(3) “Director” means the Director of the Office of
Miners’ Health, Safety and Training or West Virginia
Office of Miners’ Health, Safety and Training established
under article one, chapter twenty two-a of this code.

(4) “Eligible safety property” means safety technology
equipment that, at the time of acquisition, is on the list of
approved innovative mine safety technology: Provided,
That eligible safety property includes proximity detection systems and cameras used on continuous mining machines and underground haulage equipment and machine mounted methane monitors required by section forty-three, article two, chapter twenty-two-a of this code.

(5) “Eligible taxpayer” means a coal mining company that purchases eligible safety property.

(6) “List of approved innovative mine safety technology” means the list required to be compiled and maintained by the Board of Coal Mine Health and Safety and approved and published by the director under this article: Provided, That proximity detection systems, cameras and underground safety shelters and the refurbishing thereof shall qualify and be on the list whether required or not.

(7) “Office of Miners’ Health, Safety and Training” or “West Virginia Office of Miners’ Health, Safety and Training” means the Office of Miners’ Health, Safety and Training established under article one, chapter twenty-two-a of this code.

(8) “Person” includes any corporation, limited liability company or partnership.

(9) “Qualified investment” means the eligible taxpayer’s investment in eligible safety property pursuant to a qualified purchase as qualified and limited by section six of this article.

(10) “Qualified purchase” means and includes only acquisitions of eligible safety property for use in this state.

(A) A lease of eligible safety property may constitute a qualified purchase if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology and if the primary term of the lease for the eligible safety property is
five years or more. Leases having a primary term of less than five years do not qualify.

(B) “Qualified purchase” does not include:

(i) Purchases or leases of realty or any cost for, or related to, the construction of a building, facility or structure attached to realty;

(ii) Purchases or leases of property not exclusively used in West Virginia;

(iii) Repair costs including materials used in the repair unless, for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iv) Motor vehicles licensed by the Division of Motor Vehicles;

(v) Clothing;

(vi) Airplanes;

(vii) Off-premises transportation equipment;

(viii) Leases of tangible personal property having a primary term of less than five years;

(ix) Property that is used outside this state; and

(x) Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer that was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(C) Acquisitions, including leases, of eligible safety property may constitute qualified purchases for purposes of this article only if:
(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group but the Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(11) “Safety technology” means depreciable tangible personal property and equipment, other than clothing, principally designed to directly minimize workplace injuries and fatalities in coal mines.

(12) “Taxpayer” means a person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter.

§11-13BB-4. List of approved innovative mine safety technology.

(a) List of approved innovative mine safety technology. — The Board of Coal Mine Health and Safety, established in section two, article eleven, chapter twenty-two-a of this code, shall annually compile a proposed list of approved innovative mine safety technologies as required by subsection (g), section three, article eleven, chapter twenty-two-a of this code. The list shall be transmitted to the director for approval. The director has thirty days to approve or amend the list. At the expiration of thirty days, the director shall publish the list of approved
innovative mine safety technologies. The list shall describe and specifically identify safety equipment for use in West Virginia coal mines which, in the fiscal year when the equipment is added to the list, is not required by the Mine Safety and Health Administration of the United States Department of Labor or the West Virginia Office Of Miners’ Health, Safety And Training or any other state or federal agency, to be used in a coal mine or on a mine site or on any other industrial site. Safety equipment shall remain on the list from year to year until the director removes it from the list. The Office of Miners’ Health, Safety and Training may establish by legislative rule or interpretive rule a shorter time period for issuance of and updating of the list of approved innovative mine safety technologies.

(b) It is the intent of the Legislature that the list of approved innovative mine safety technologies include only safety equipment that is depreciable tangible personal property for federal income tax purposes, which is so new to the industry and so innovative in concept, design, operation or performance that, in the fiscal year when it is added to the list of approved innovative mine safety technologies, the equipment has not yet been adopted by the Federal Mine Safety and Health Administration or the West Virginia Office of Miners’ Health, Safety and Training or any other state or federal agency as required equipment to be used in a coal mine or on a mine site or on any other industrial site, except as specified herein.

(c) Delisting. — (1) If any item of equipment or any line of equipment or class of equipment is listed on the list of approved innovative mine safety technologies in any fiscal year, but then is subsequently adopted by the Federal Mine Safety and Health Administration or the West Virginia Office of Mine Safety or any other state or federal agency as required equipment to be used in a coal mine or on a mine site or on any other industrial site, the equipment shall be removed from the list of approved innovative mine safety
technologies compiled and issued for the next succeeding periodic issuance thereafter of the list of approved innovative mine safety technologies.

(2) If it is determined by the director that any item of equipment or any line of equipment or class of equipment that is listed on the list of approved innovative mine safety technology has ceased to be innovative in concept, design, operation or performance, or is ineffective, or has failed to meet the expectations of the Board of Coal Mine Health and Safety, or has failed to prove its value in directly minimizing workplace injuries and fatalities in coal mines, the equipment shall be removed from the list of approved innovative mine safety technologies that is compiled and issued for the next succeeding periodic issuance of the list of approved innovative mine safety technologies after the determination has been reached.

(3) However, any eligible taxpayer who invested in the equipment as certified eligible safety property during the time the equipment was lawfully listed on the list of approved innovative mine safety technologies, shall not forfeit the credit authorized by this article as a result of the delisting of the equipment under either subdivision (1) or subdivision (2) of this subsection, so long as the requirements of this article are otherwise fulfilled by the taxpayer for entitlement to the credit.


The tax credit authorized in this article shall terminate December 31, 2025.
CHAPTER 241
(Com. Sub. for S. B. 73 - By Senators Weld and Cline)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §17C-4-1 of the Code of West Virginia, 1931, as amended, relating generally to motor vehicle crashes involving death or personal injuries; defining terms; clarifying circumstances under which a driver may leave the scene of a crash for the purpose of rendering assistance to an injured person in the crash; clarifying essential elements of the offenses of leaving the scene of a crash that causes bodily injury, serious bodily injury, or death; creating the felony offense of leaving the scene of a crash that causes another person serious bodily injury and providing criminal penalties therefor; clarifying knowledge requirement; and clarifying that the offense of leaving the scene of a crash that causes death requires death to occur within one year of the crash.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCIDENTS.

§17C-4-1. Crashes involving death or personal injuries; Erin’s Law.

1 (a) The driver of any vehicle involved in a crash resulting in the injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close to the scene as possible and return to and remain at the scene of the crash until he or she has complied with the requirements of §17C-4-3 of this code: Provided, That the driver may leave the scene of the crash as may reasonably be necessary for the purpose of
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rendering assistance to any person injured in the crash, as
required by §17C-4-3 of this code.

(b) Any driver who is involved in a crash in which
another person suffers bodily injury and who intentionally
violates §17C-4-1(a) of this code when he or she knows or
has reason to believe that another person has suffered
physical injury in said crash is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not more than
$1,000, confined in jail for not more than one year, or both
fined and confined.

(c) Notwithstanding the provisions of §17C-4-1(b) of
this code, any driver who is involved in a crash in which
another person suffers serious bodily injury and who
intentionally violates §17C-4-1(a) of this code when he or
she knows or has reason to believe that another person has
suffered physical injury in said crash is guilty of a felony
and, upon conviction thereof, shall be fined not more than
$2,500, or imprisoned in a state correctional facility for not
less than one year nor more than three years, or both fined
and imprisoned.

(d) Notwithstanding the provisions of §17C-4-1(b) or
§17C-4-1(c) of this code, any driver who is involved in a
crash that proximately causes the death of another person
who intentionally violates §17C-4-1(a) of this code when he
or she knows or has reason to believe that another person
has suffered physical injury in said crash is guilty of a felony
and, upon conviction thereof, shall be fined not more than
$5,000, or imprisoned in a state correctional facility for not
less than one year nor more than five years, or both fined
and imprisoned: Provided, That any death underlying a
prosecution under this subsection must occur within one
year of the crash.

(e) As used in this section:

(1) “Bodily injury” means injury that causes substantial
physical pain, illness, or any impairment of physical
condition;
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(2) “Physical injury” means bodily injury, serious bodily injury or death; and

(3) “Serious bodily injury” means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality occurring because of a preterm delivery.

(f) The commissioner shall revoke the license or permit or operating privilege to drive of any resident or nonresident person convicted pursuant to the provisions of this section for a period of one year from the date of conviction or the date of release from incarceration, whichever is later.

(g) This section may be known and cited as Erin’s Law.

CHAPTER 242

(Com. Sub. for S. B. 616 - By Senators Boso and Cline)

[Passed March 8, 2018; in effect ninety days from passage.][Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as amended, relating to permitting the Commissioner of Highways to issue a special permit increasing the maximum gross weight for certain wood-bearing vehicles equipped with six axles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. SIZE, WEIGHT, AND LOAD.

§17C-17-11. Permits for excess size and weight.
(a) The Commissioner of Highways may, in his or her discretion, upon application in writing and good cause shown issue a special permit in writing authorizing:

(1) The applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not, provided the applicant agrees to compensate the Commissioner of Highways for all damages or expenses incurred in connection with the crossing;

(2) The applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter; and

(3) The applicant to move or operate, for limited or continuous operation, a vehicle hauling containerized cargo in a sealed, seagoing container to or from a seaport or inland waterway port that has or will be transported by marine shipment where the vehicle is not, as a result of hauling the container, in conformity with the provisions of this article relating to weight limitations, upon the conditions that:

(A) The container be hauled only on the roadways and highways designated by the Commissioner of Highways;

(B) The contents of the container are not changed from the time it is loaded by the consignor or the consignor’s agent to the time it is delivered to the consignee or the consignee’s agent; and

(C) Any additional conditions as the Commissioner of Highways or the Public Service Commission may impose to otherwise ensure compliance with the provisions of this chapter.
(b)(1) The Commissioner of Highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the Commissioner of Highways upon terms and restrictions prescribed by the Public Service Commission, together with the Commissioner of Highways.

(2) For purposes of this section, nondivisible load means any load exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(A) Compromise the intended use of the vehicle, to the extent that the separation would make it unable to perform the function for which it was intended;

(B) Destroy the value of the load or vehicle, to the extent that the separation would make it unusable for its intended purpose; or

(C) Require more than eight work hours to dismantle using appropriate equipment: Provided, That the applicant for a nondivisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(3) The Commissioner of Highways may, in his or her discretion, upon application in writing and based upon an engineering analysis, issue a special permit in writing authorizing the applicant, when operating upon any highway of this state designated by the commissioner, to operate or move a vehicle or combination of vehicles, hauling commodities manufactured for interstate commerce, of a size or weight or divisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not.
(A) The engineering analysis must demonstrate that the vehicle permitted under this subdivision does not adversely affect the designated routes when compared to the size, weight, and load provisions of this chapter.

(B) The maximum gross vehicle weight permitted under this subsection is 120,000 pounds.

(C) The permit may contain any additional conditions the Commissioner of Highways or the Public Service Commission may impose to otherwise ensure compliance with the provisions of this chapter.

(4) The Commissioner of Highways may, in his or her discretion, upon application in writing, issue a special permit in writing authorizing the applicant to transport logs, wood chips, timber, other natural raw wood, lumber, paper, wood veneer, wood pellets, or any other wood product of the forest, craft, or manufacturing. The vehicle authorized by the permit shall be a tractor-semitrailer combination with six axles, each axle equipped with brakes, and limited to a maximum gross vehicular weight of 94,000 pounds, without any tolerance. The maximum weight of each axle, beginning with the steering axle commencing rearwards, respectively shall be 15,000 pounds, 17,000 pounds, 17,000 pounds, 15,000 pounds, 15,000 pounds, and 15,000 pounds. The tractor shall have one steer axle and two drive axles in tandem, and the trailer shall have three trailer axles in tridem. The distance between the last drive axle of the tractor and the first trailer axle shall be a minimum of 29 feet and six inches. Permits under this subdivision will not be issued for any vehicle traveling on interstate routes.

(c) The application for any permit other than a special annual permit shall specifically describe the vehicle or vehicles and load to be operated or moved along or across the highway and the particular highway or crossing of the highway for which the permit to operate is requested, and
whether the permit is requested for a single trip or for a continuous operation.

(d) The Public Service Commission is authorized to issue or withhold a permit at his or her discretion; or, if the permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require the undertaking, bond, or other security considered necessary to compensate for any injury to any roadway structure and to specify the type, number, and the location for escort vehicles for any vehicle: Provided, That in establishing limitations on permits issued under this section, the Public Service Commission shall consult with the Commissioner of Highways, and may not issue, limit, or condition a permit in a manner inconsistent with the authority of the Commissioner of Highways.

The Public Service Commission may charge a fee for the issuance of a permit for a mobile home and a reasonable fee for the issuance of a permit for any other vehicle under the provisions of this section to pay the administrative costs thereof.

(e) Every permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the Commissioner of Highways or the Public Service Commission, and no person shall violate any of the terms or conditions of the special permit.
AN ACT to amend and reenact §17C-6-1 of the Code of West Virginia, 1931, as amended, relating to redefining school zone.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

(a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be controlled as necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this section is lawful, but any speed in excess of the limits specified in this subsection or established as authorized in this section is unlawful. The following speed limits apply:

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school
property, including school grounds and any street or highway abutting the school grounds and extending one hundred twenty-five feet along the street or highway from the school grounds and, in the case of school property not abutting a street or highway but accessed through a right-of-way granted for entrance to school property, a school zone established by an engineering study conducted by the Division of Highways is all school property, including school grounds and any property within the access right-of-way, and extending one hundred twenty-five feet along the street or highway from the entrance to the access right-of-way. The West Virginia Division of Highways shall erect signage indicating the place of entry and exit of each school zone. Upon a formal vote and a written request by a county board of education to expand a school zone to a road that is adjacent to school property or from the entrance to an access right-of-way, the West Virginia Division of Highways shall expand the school zone by erecting new signage indicating the expanded school zone’s location and speed limit within ninety days of receiving the request: Provided, That the school zone may not be expanded more than one hundred twenty-five feet along an adjacent road unless the division determines that the additional extension is needed and necessary for the safety of the school children. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the Division of Highways;

(2) Twenty-five miles per hour in any business or residence district; and

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an
appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than $500: Provided, That if the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than $500 or confined in jail for not more than six months, or both fined and confined.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500: Provided, That if the conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than $100 nor more than $500 or confined in jail for not more than six months, or both fined and confined: Provided, however, That if the signage required by subdivision (1) is not present in the school zone at the time of the violation, then any person who
violates said provision is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25.

(g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then, upon conviction thereof, that person shall be fined not more than $5, plus court costs.

(h) Any person operating a commercial motor vehicle engaged in the transportation of coal on the coal resource transportation road system who violates subsection (a), (b) or (c) of this section shall, upon conviction, be subject to fines in triple the amount otherwise provided in subsection (e) of this section.

(i) If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway of this state and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles: Provided, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver’s license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

(j) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled access highway or interstate highway and if the maximum speed limit in the other state is less than the maximum speed limit for a comparable controlled access highway or interstate highway in this state, and if the evidence shows that the motor vehicle was being operated...
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at ten miles per hour or less above what would be the maximum speed limit for a comparable controlled access highway or interstate highway in this state, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles or, if transmitted, shall not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: Provided, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver’s license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

CHAPTER 244

(S. B. 631 - By Senators Blair, Arvon, Boley, Boso, Drennan, Facemire, Gaunch, Mann, Maroney, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo and Unger)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §24C-1-2, §24C-1-3, §24C-1-6, and §24C-1-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §24C-1-2a, §24C-1-2b, §24C-1-9, §24C-1-10, and §24C-1-11, all relating to the one-call system; adding and modifying definitions; creating Underground Damage Prevention Fund; creating Underground Facilities Damage Prevention Board; specifying authority, responsibilities, membership, and liability of board; requiring
reports by board; authorizing actions by Public Service Commission; expanding required membership of one-call system; authorizing cost apportionment and collection from operators; modifying standard color code for temporary markings; exempting local or state government responding to emergency repair or replacement of traffic control device from notice requirements; requiring underground facilities be locatable; and providing for civil enforcement, including citations, orders, hearings, monetary civil penalties, and mandatory training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

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

2 “Board” or “Underground Facilities Damage Prevention Board” means the Underground Facilities Damage Prevention Board created in this article.

3 “Commission” or “Public Service Commission” means the Public Service Commission of West Virginia.

4 “Damage” means any impact or contact with or weakening of the support for, or the partial or complete destruction of, an underground facility, its appurtenances, protective casing, coating or housing, which, according to the operation practices of the operator or state or federal regulation, requires repair or replacement.

5 “Demolish” or “demolition” means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment or discharge of explosives which could damage underground facilities: Provided, That “demolish” and “demolition” do not include earth-disturbing activities
authorized pursuant to the provisions of §22-3-1 et seq. or §22A-2-1 et seq. of this code.

“Emergency” means:

1. A condition constituting a clear and present danger to life, health, or property by reason of escaping toxic, corrosive, or explosive product, oil or oil-gas, or natural gas hydrocarbon product, exposed wires, or other breaks or defects in an underground facility; or

2. A condition that requires immediate correction to assure the safety of the general public and operator personnel.

“Equipment operator” means any individual in physical control of powered equipment or explosives when being used to perform excavation work or demolition work.

“Excavate” or “excavation” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives, and includes, without limitation, boring, backfilling, grading, trenching, trenchless technology, digging, ditching, dredging, drilling, auguring, tunneling, moleing, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material, but does not include underground or surface mining operations or related activities or the tilling of soil for agricultural purposes or for domestic gardening. Further, for purposes of this article, the terms “excavate” and “excavation” do not include routine maintenance of paved public roads or highways by employees of state, county, or municipal entities or authorities which:

1. Perform all work within the confines of the traveled portion of the paved public way; and

2. Do not excavate to a depth greater than 12 inches measured from the top of the paved road surface.
“Excavator” means any person intending to engage or engaged in excavation or demolition work.

“Fund” or “Underground Damage Prevention Fund” means the fund created in §24C-1-2b of this code.

“Member” means a member of the one-call system as authorized by this article.

“One-call system” means a communication system that receives notification from excavators of intended excavation work and prepares and transmits such notification to operators of underground facilities in accordance with this article.

“Operator” means any person who operates an underground facility.

“Person” means any individual, firm, joint venture, partnership, corporation, association, state agency, county, municipality, cooperative association, or joint stock association, and any trustee, receiver, assignee, agency, or personal representative thereof.

“Powered equipment” means any equipment energized by an engine, motor or hydraulic, pneumatic, or electrical device and used in excavation or demolition work.

“Underground facility” means any underground pipeline facility owned by a utility and regulated by the Public Service Commission, which is used in the transportation or distribution of gas, oil, or a hazardous liquid; any underground pipeline facility, owned by a company subject to the jurisdiction of the federal energy regulatory commission, which is used in the gathering, transportation, or distribution of gas, oil, or a hazardous liquid; any underground production or gathering pipeline for gas, oil, or any hazardous substance with a nominal inside diameter in excess of four inches and that is not otherwise subject to one-call reporting requirements under federal or state law; any underground facility used as a water
main, storm sewer, sanitary sewer, or steam line; any underground facility used for electrical power transmission or distribution; any underground cable, conductor, waveguide, glass fiber, or facility used to transport telecommunications, optical, radio, telemetry, television, or other similar transmissions; and any facility used in connection with any of the foregoing facilities on a bridge, a pole or other span, or on the surface of the ground, any appurtenance, device, cathodic protection system, conduit, protective casing, or housing used in connection with any of the foregoing facilities: Provided, That “underground facility” does not include underground or surface coal mine operations.

“Workday” means any day except Saturday, Sunday, or a federal or state legal holiday.

“Work site” means the location of excavation or demolition work as described by an excavator, operator, or person or persons performing the work.

§24C-1-2a. Underground Facilities Damage Prevention Board.

(a) There is hereby created an Underground Facilities Damage Prevention Board for the purpose of enforcing this article.

(b) It is the intent of the Legislature that the board and its enforcement activities shall not be funded by appropriations from the state budget. All civil penalties imposed and collected by the board shall not revert to the General Fund but shall be retained for the exclusive use of the board pursuant to this article.

(c) The board shall have the power and authority to investigate damage to underground facilities caused by an excavator. The board may consult with the Public Service Commission as needed regarding investigation of damages to underground facilities under its jurisdiction. The commission shall collect from the board any expenses incurred during the consultation. The board shall furnish to
the commission at least annually electronic copies of all
reports of investigations and enforcement activities
conducted by or on behalf of the board.

(d) The board shall be composed of 10 voting members
who shall be appointed by the Governor to serve four-year
terms in accordance with West Virginia law. The board
shall be empowered to establish one or more subcommittees
in performing its tasks. Appointments to the board shall be
made as follows:

(1) The President of Miss Utility of West Virginia or the
president’s designee;

(2) One representative of the excavation, utility, or site
construction industry;

(3) One representative of the natural resource extraction
industry;

(4) The Executive Director of the West Virginia
Municipal League or its designee;

(5) The Executive Director of the West Virginia Rural
Water Association or its designee;

(6) One representative of the natural gas transmission or
distribution or hazardous liquid industry;

(7) One representative of the electric, cable, or
communications industry;

(8) One representative of the privately owned water
and/or wastewater services industry;

(9) One representative from the general public; and

(10) The Chairman of the Public Service Commission
or the chairman’s designee.

(e) The board shall meet not less than twice per year,
with a date and time to be set by its chairman upon at least
five days’ notice provided by United States mail, electronic mail, or personal delivery to every board member. The board may hold meetings and vote by telephone, video connection, computer, or other electronic means.

(f) Six members of the board shall constitute a quorum, and a majority vote of those present and voting at any one meeting shall be necessary to transact business.

(g) In the absence of willful misconduct, the members of the board shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of the board.

(h) Members of the board shall serve without compensation and without reimbursement for expenses. Nothing contained in this section shall be construed to prevent any sponsoring organization for compensating its representative on the board for salary, expenses, or other compensation considered as a condition for their employment.

(i) Every two years, the board shall elect a chair and other officers from among its members as the board deems necessary.


(a) There is hereby created an Underground Damage Prevention Fund to be administered and used by the Underground Damage Facilities Prevention Board for the purpose of carrying out its duties under this article. All sources of funds collected by the board under this article, including, but not limited to, grants, assessments, and civil penalties collected pursuant to this article, shall be deposited into the fund. Any moneys remaining in the fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the fund for the exclusive use of the board. The expenditure of moneys in the fund shall be at the
discretion of the board to carry out its duties under this article. Excess funds shall be used for purposes related to damage prevention, including, but not limited to, public awareness programs, training, and educational programs for excavators, operators, line locators, and persons to reduce the number and severity of violations of this article.

(b) The Public Service Commission or the board, or both, may apply for available grants, including those awarded by the United States Department of Transportation’s Pipeline and Hazardous Materials and Safety Administration. The board shall comply with any restrictions placed on any grant received from a government agency. Grants may be used to fund the cost of services associated with this article or for the purposes stated in each grant.

(c) In the event that the annual cost of services associated with this article exceed the funds available in the fund, the annual operating costs shall be apportioned in a proportional manner and collected by the one-call system from the operators in an amount equal to the amount necessary to offset the cost of investigative and administrative services. Under no circumstances shall any operating costs or liabilities of the board be ultimately deducted or paid from Public Service Commission special revenue funds.

§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

(a) Each operator of an underground facility in this state shall be a member of a one-call system for the area in which the underground facility is located.

(b) Each member shall provide the following information to the one-call system on forms developed and provided for that purpose by the one-call system:

(1) The name of the member;
(2) The geographic location of the member’s underground facilities as prescribed by the one-call system; and

(3) The member’s office address and telephone number to which inquiries may be directed as to the locations of the operator’s underground facilities.

(c) Each member shall revise in writing the information required by §24C-1-3(b) of this code as soon as reasonably practicable, but not to exceed 180 days, after any change.

(d) Within 48 hours, excluding Saturdays, Sundays, and legal federal or state holidays, after receipt of a notification by the one-call system from an excavator of a specific area where excavation or demolition will be performed, the operator of underground facilities shall:

(1) Respond to such notification by providing to the excavator the approximate location, within two feet horizontally from the outside walls of such facilities, and type of underground facilities at the site;

(2) Use the color code prescribed in §24C-1-6 of this code when providing temporary marking of the approximate location of underground facilities; and

(3) Notify the excavator that the operator did not leave a temporary marking of the location of underground facilities because there are no lines in the area of the proposed excavation or demolition.

(e) Failure of an operator who is required to be a member to comply with the provisions of this article may not prevent the excavator from proceeding but shall bar the operator from recovery of any costs associated with damage to its underground facilities resulting from such failure, except for damage caused by the willful or intentional act of the excavator.
(f) Notwithstanding the provisions of §24C-1-3(e) of this code, a member is not barred from recovery under §24C-1-3(e) of this code for failure to comply with §24C-1-3(d)(1) of this code, but shall have his or her right to recover, if any, determined by common law, if the operator responded to one-call notification in a timely manner, but was unable to accurately locate lines because such lines were nonmetallic and had no locating wire or other marker.


Temporary marking provided by operators and excavators to indicate the approximate location of underground facilities and work site boundaries shall utilize the following color code per facility type:

1. (1) WHITE: Proposed excavation.
2. (2) PINK: Temporary survey markings.
3. (3) RED: Electric power lines, cables, conduit, and lighting cables.
4. (4) YELLOW: Gas, oil, steam, petroleum, or gaseous materials.
5. (5) ORANGE: Communication, alarm or signal lines, cables, or conduit.
6. (6) BLUE: Potable water.
7. (7) PURPLE: Reclaimed water, irrigation, or slurry lines.
8. (8) GREEN: Sewer or drain lines.

§24C-1-7. Exceptions during emergencies.

(a) Compliance with the notification requirements of §24C-1-5 of this code is not required of any person engaging in excavation or demolition in the event of an emergency: Provided, that the person gives oral notification of the
emergency work as soon as reasonably practicable to the one-call system.

(b) During any emergency, excavation or demolition may begin immediately: Provided, That reasonable precautions are taken to protect underground facilities: Provided, however, That such precautions may not serve to relieve the excavator from liability for damage to underground facilities. The one-call system shall accept all emergency notifications and shall provide immediate notice to the affected members and indicate the emergency nature of the notice.

c) Repair or replacement of an existing traffic control device at the existing location and existing depth shall be considered an emergency, and compliance with the notice requirements of this section shall not be required of any local or state government responding to the emergency repair or replacement of a traffic control device.

§24C-1-9. Civil enforcement.

(a) Any person who violates this article by failure to notify the one-call system, or who violates the rules proposed or promulgated under this article, shall be subject to civil penalty as follows:

(1) For a first violation, the violator shall complete a course of training concerning compliance with this article as determined by the board;

(2) For a second violation occurring within a five-year period, the violator shall complete a course of training concerning compliance with this article as determined by the board or pay a civil penalty in an amount set by the board, not to exceed $500 per incident, or both;

(3) For a third or subsequent violation occurring within a five-year period, the violator shall pay a civil penalty in an amount set by the board, not to exceed $2,500 per incident; and
(4) Notwithstanding this section, if any violation was the result of gross negligence or willful or wanton misconduct as determined by the board, the board shall require the violator to complete a course of training concerning compliance with this article as determined by the board and pay a civil penalty not to exceed $5,000 per incident.

(b) Any person who is required to complete a course of training under this section shall be responsible for the cost of the training. As used in this section, “course of training” means training developed by or under the direction of the board.

(c) Any excavator who violates this article by failing to notify the one-call system of the intended excavation or demolition may be required to cease work on any excavation, or not start a proposed excavation, until the excavator complies with this article.

(d) Nothing in this article shall limit any person’s right to pursue any additional civil remedy otherwise allowed by law.

(e)(1) If the person to whom the citation is issued under this section does not pay the citation or submit to training as ordered or both, within 30 days, the board shall appoint a hearing officer to conduct a hearing and issue an initial order pursuant to the State Administrative Procedures Act. The hearing shall be held at the time and place set forth in the citation notice of hearing in the county where excavation referenced in the citation occurred, unless otherwise agreed to by the person to whom the citation was issued.

(2) A person aggrieved by the final order may, within 30 days, file a petition for judicial review pursuant to §29A-1-1 et seq. of this code.
§24C-1-10. Scope of authority.

Nothing in this article shall restrict or expand the jurisdiction of the Public Service Commission.

§24C-1-11. Underground utilities to be locatable.

All underground facilities owned by an operator that are installed on or after July 1, 2018, shall be installed in a manner that will make those underground facilities locatable using a generally accepted locating method.

CHAPTER 245

(Com. Sub. for H. B. 4233 - By Delegates Storch, Hamrick, Ferro, Barrett and Ellington)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]
organization is a separate person; providing that a series organization includes a foreign series limited liability company; providing for the limiting, modifying or superseding of the federal Electronic Signatures in Global and National Commerce Act; and adding and modifying definitions and headings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. UNIFORM VOIDABLE TRANSACTIONS ACT.

§40-1A-1. Definitions.

As used in this article:

(a) “Affiliate” means:

(1) A person that directly or indirectly owns, controls or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities;

(i) As a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) Solely to secure a debt, if the person has not exercised the power to vote;

(2) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) As a fiduciary or agent without sole power to vote the securities; or

(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;
(3) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(4) A person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(b) “Asset” means property of a debtor, but the term does not include:

(1) Property to the extent it is encumbered by a valid lien;

(2) Property to the extent it is generally exempt under nonbankruptcy law; or

(3) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(c) “Claim,” except as used in “claim for relief,” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(d) “Creditor” means a person who has a claim.

(e) “Debt” means liability on a claim.

(f) “Debtor” means a person who is liable on a claim.

(g) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(h) “Insider” includes:

(1) If the debtor is an individual:
(i) A relative of the debtor or of a general partner of the debtor;

(ii) A partnership in which the debtor is a general partner;

(iii) A general partner in a partnership described in subparagraph (ii) of this paragraph; or

(iv) A corporation of which the debtor is a director, officer or person in control;

(2) If the debtor is a corporation:

(i) A director of the debtor;

(ii) An officer of the debtor;

(iii) A person in control of the debtor;

(iv) A partnership in which the debtor is a general partner;

(v) A general partner in a partnership described in subparagraph (iv) of this paragraph; or

(vi) A relative of a general partner, director, officer or person in control of the debtor;

(3) If the debtor is a partnership:

(i) A general partner in the debtor;

(ii) A relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) Another partnership in which the debtor is a general partner;

(iv) A general partner in a partnership described in subparagraph (iii) of this paragraph; or

(v) A person in control of the debtor;
(4) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(5) A managing agent of the debtor.

(i) “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien or a statutory lien.

(j) “Organization” means a person other than an individual.

(k) “Person” means an individual, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision or agency, business trust, estate, trust or any other legal or commercial entity.

(l) “Property” means anything that may be the subject of ownership.

(m) “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.

(n) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(o) “Sign” means, with present intent to authenticate or adopt a record:

(1) To execute or adopt a tangible symbol; or
(2) To attach to or logically associate with the record an electronic symbol, sound, or process.

(p) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(q) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

§40-1A-2. Insolvency.

(a) A debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.

(b) A debtor who is generally not paying his or her debts as they become due, other than as a result of a bona fide dispute, is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of all the partnership’s assets and the sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.
§40-1A-4. Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(b) In determining actual intent under subdivision (1), subsection (a) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor’s assets;

(6) The debtor absconded;
(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

§40-1A-5. Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to the provisions of §40-1A-2(b) of this code, a creditor making a claim for relief under subsection
(a) or (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

§40-1A-6. When transfer is made or obligation is incurred.

For the purposes of this article:

(a) A transfer is made:

(1) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(2) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this article that is superior to the interest of the transferee;

(b) If applicable law permits the transfer to be perfected as provided in subdivision (a) of this subsection and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is considered made immediately before the commencement of this action;

(c) If applicable law does not permit the transfer to be perfected as provided in subdivision (a) of this subsection, the transfer is made when it becomes effective between the debtor and the transferee; and

(d) A transfer is not made until the debtor has acquired rights in the asset transferred and an obligation is incurred.

(e) If the obligation incurred is oral, a transfer is made when the obligation becomes effective. If the obligation incurred is evidenced by a writing, the obligation becomes
29 effective when the writing is delivered to or for the benefit
30 of the obligee.

§40-1A-8. Defenses, liability and protection of transferee.

1 (a) A transfer or obligation is not voidable under §40-
2 1A-4(a)(1) of this code, against a person who took in good
3 faith and for a reasonably equivalent value or against any
4 subsequent transferee or obligee.

5 (b) Except as otherwise provided in this section, to the
6 extent a transfer is voidable in an action by a creditor under
7 §40-1A-7(a)(1) of this code, the creditor may recover
8 judgment for the value of the asset transferred, as adjusted
9 under subsection (c) of this section, or the amount necessary
10 to satisfy the creditor’s claim, whichever is less. The
11 judgment may be entered against:

12 (1) The first transferee of the asset or the person for
13 whose benefit the transfer was made; or

14 (2) Any subsequent transferee other than a good faith
15 transferee who took for value or from any subsequent
16 transferee.

17 (c) If the judgment under subsection (b) of this section
18 is based upon the value of the asset transferred, the
19 judgment must be for an amount equal to the value of the
20 asset at the time of the transfer, subject to adjustment as the
21 equities may require.

22 (d) Notwithstanding voidability of a transfer or an
23 obligation under this article, a good-faith transferee or
24 obligee is entitled, to the extent of the value given the debtor
25 for the transfer or obligation, to:

26 (1) A lien on or a right to retain any interest in the asset
27 transferred;

28 (2) Enforcement of any obligation incurred; or
(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under §40-1A-4(a)(2) or §40-1A-5(a)(2) of this code if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with §46-9-1 et seq. of this code.

(f) A transfer is not voidable under §40-1A-5(b) of this code:

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e) or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided by this subsection, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of subdivision (1) or (2), subsection (b) of this section.
(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.


(a) In this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual’s principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under this article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

§40-1A-14. Application to and recognition of a foreign series organization.

(a) In this section:

“Protected series” means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in the definition of a series organization in §40-1A-14 of this code.

“Series organization” means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(A) The organic record of the organization provides for creation by the organization of one or more protected series,
however denominated, with respect to specified property of
the organization, and for records to be maintained for each
protected series that identify the property of or associated
with the protected series.

(B) Debt incurred or existing with respect to the
activities of, or property of or associated with, a particular
protected series is enforceable against the property of or
associated with the protected series only, and not against the
property of or associated with the organization or other
protected series of the organization.

(C) Debt incurred or existing with respect to the
activities or property of the organization is enforceable
against the property of the organization only, and not
against the property of or associated with a protected series
of the organization.

(b) A series organization and each protected series of
the organization is a separate person for purposes of this
article even if for other purposes a protected series is not a
person separate from the organization or other protected
series of the organization.

(c) A series organization includes a foreign series
limited liability company, or one or more protected series
thereof, which is organized as a series organization under
the laws of another state or jurisdiction, and shall be
recognized as a foreign series limited liability company in
this state pursuant to, and in compliance with the provisions
of §31B-10-1 et seq. of this code.

§40-1A-15. Relation to Electronic Signatures In Global And
National Commerce Act.

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 supersed
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).
AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to whom Workers’ Compensation Fund is disbursed; including rebuttable presumptions for certain injuries and diseases for professional firefighters; setting eligibility criteria for rebuttable presumptions; setting expiration of rebuttable presumption regarding leukemia, lymphoma, or multiple myeloma arising out of, and in the course of, employment as a firefighter on July 1, 2023, absent legislative action to the contrary; and eliminating outdated and obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in “injury” and “personal injury”; definition of occupational pneumoconiosis and other occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary disease for firefighters.

(a) Subject to the provisions and limitations elsewhere in this chapter, workers’ compensation benefits shall be paid the Workers’ Compensation Fund, to the employees of employers subject to this chapter who have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of the
employees in case death has ensued, according to the provisions hereinafter made: Provided, That in the case of any employees of the state and its political subdivisions, including: Counties; municipalities; cities; towns; any separate corporation or instrumentality established by one or more counties, cities or towns as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization established by the Department of Mental Health, or its successor agencies, for the provision of community health or intellectual and developmental disability services and which is supported, in whole or in part, by state, county, or municipal funds; board, agency, commission, department, or spending unit, including any agency created by rule of the Supreme Court of Appeals, who have received personal injuries in the course of and resulting from their covered employment, the employees are ineligible to receive compensation while the employees are at the same time and for the same reason drawing sick leave benefits. The state employees may only use sick leave for non-job-related absences consistent with sick leave use and may draw workers’ compensation benefits only where there is a job-related injury. This proviso does not apply to permanent benefits: Provided, however, That the employees may collect sick leave benefits until receiving temporary total disability benefits. The Division of Personnel shall propose rules for legislative approval pursuant to §29A-3-1 et seq. of this code relating to use of sick leave benefits by employees receiving personal injuries in the course of and resulting from covered employment: Provided further, That in the event an employee is injured in the course of and resulting from covered employment and the injury results in lost time from work and the employee for whatever reason uses or obtains sick leave benefits and subsequently receives temporary total disability benefits for the same time period, the employee may be restored sick leave time taken by him or
her as a result of the compensable injury by paying to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received. The employee shall be restored sick leave time on a day-for-day basis which corresponds to temporary total disability benefits paid to the employer: And provided further, That since the intent of this subsection is to prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing in this subsection prevents an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total disability benefits, but not both.

(b) For the purposes of this chapter, the terms “injury” and “personal injury” include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and workers’ compensation benefits shall be paid to the employees of the employers in whose employment the employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation is not payable for the disease of occupational pneumoconiosis, or death resulting from the disease, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the State of West Virginia over a continuous period of not less than two years during the 10 years immediately preceding the date of his or her last exposure to such hazards, or for any five of the 15 years immediately preceding the date of his or her last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each. The commission
may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as 60 days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.

(c) For the purposes of this chapter, disability or death resulting from occupational pneumoconiosis, as defined in §23-4-1(d) of this code, shall be treated and compensated as an injury by accident.

(d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term “occupational pneumoconiosis” includes, but is not limited to, such diseases as silicosis, anthracosilicosis, coal worker’s pneumoconiosis, commonly known as black lung or miner’s asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker’s pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated in this section meeting the definition of occupational pneumoconiosis set forth in this subsection.

(e) In determining the presence of occupational pneumoconiosis, x-ray evidence may be considered, but may not be accorded greater weight than any other type of evidence demonstrating occupational pneumoconiosis.

(f) For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the
case of occupational pneumoconiosis, a disease is considered to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances:

(1) That there is a direct causal connection between the conditions under which work is performed and the occupational disease; (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment; (5) that it is incidental to the character of the business and not independent of the relation of employer and employee; and (6) that it appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction:

Provided, That compensation is not payable for an occupational disease or death resulting from the disease unless the employee has been exposed to the hazards of the disease in the State of West Virginia over a continuous period that is determined to be sufficient, by rule of the board of managers, for the disease to have occurred in the course of and resulting from the employee’s employment.

An application for benefits on account of an occupational disease shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from the claim among the employers by whom the claimant was employed. The allocation shall be based upon the time and degree of exposure with each employer.

(g) No award may be made under the provisions of this chapter for any occupational disease contracted prior to July 1, 1949. An employee has contracted an occupational disease within the meaning of this subsection if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.
(h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury or who has developed leukemia, lymphoma, or multiple myeloma arising out of and in the course of employment as a firefighter has received an injury or contracted a disease arising out of and in the course of his or her employment exists if: (A) The person has been actively employed by a fire department as a professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary disease or death; (B) the injury or onset of the disease or death occurred within six months of having participated in firefighting or a training or drill exercise which actually involved firefighting; and (C) in the case of the development of leukemia, lymphoma, or multiple myeloma the person has been actively employed by a fire department as a professional firefighter for a minimum of five years in the state prior to the development of leukemia, lymphoma, or multiple myeloma, has not used tobacco products for at least 10 years, and is not over the age of 65 years. When the above conditions are met, it shall be presumed that sufficient notice of the injury, disease, or death has been given and that the injury, disease, or death was not self-inflicted.

(2) The amendments made to this section during the 2018 regular session of the Legislature to include leukemia, lymphoma, or multiple myeloma arising out of and in the course of employment as a firefighter as a rebuttable presumption shall expire on July 1, 2023, unless extended by the Legislature.

(i) Claims for occupational disease as defined in §23-4-1(f) of this code, except occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury and disease for professional firefighters, shall be processed in like manner as claims for all other personal injuries.
CHAPTER 247

(H. B. 4628 - By Delegates Nelson, C. Miller, Boggs, Westfall, Espinosa, Ambler, Frich, Hartman and Storch)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the redirection of amounts collected from certain surcharges and assessments on workers’ compensation insurance policies for periods prior to January 1, 2019; terminating the surcharges and assessments after December 31, 2018; and terminating the provisions of the section beginning on and after January 1, 2019, and exceptions thereto.

Be it enacted by the Legislature of West Virginia:

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: And
provided further, That, notwithstanding any provision of this subdivision or any other provision of this code to the contrary, seventy-five percent of the deposits of the amount collected pursuant to this subdivision, for any period commencing after June 30, 2018, and ending before January 1, 2019, shall be deposited into 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.

(h) Notwithstanding any other provisions of this section to the contrary, after December 31, 2018, no surcharges may be assessed under subdivision (3), subsection (f) of this section or subsection (g) of this section. Except as otherwise provided in this subsection, the provisions of
subdivision (3), subsection (f) of this section and subsection (g) of this section are terminated and shall be of no force or effect beginning on and after January 1, 2019: Provided, That liability for surcharges assessed under subdivision (3), subsection (f) of this section for periods prior to January 1, 2019, shall continue until paid.

CHAPTER 248
(S. B. 585 - By Senators Romano, Facemire, Trump and Weld)

[Passed March 9, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to attach to Harrison County an area of Doddridge County so as to place all of the grounds of the Salem Correctional Center, formerly the West Virginia Industrial Home, within the boundary of Harrison County and to change the boundary line between said counties in conformity therewith.

Be it enacted by the Legislature of West Virginia:

THE BOUNDARY LINE BETWEEN DODDRIDGE COUNTY AND HARRISON COUNTY.

§1. The boundary line between Doddridge and Harrison Counties.

That the following bounded and described area of land now a part of the county of Doddridge and adjoining the county of Harrison shall be and is hereby severed from said county of Doddridge and attached to the county of Harrison, state of West Virginia. The boundary line between Doddridge and Harrison Counties is and shall be modified so that all property of the Salem Correctional Center,
formerly the West Virginia Industrial Home, shall be within Harrison County as follows:

Beginning at a point in the chain link fence on the line between Doddridge County and Harrison County, West Virginia, being the northwest corner of the tract of land herein described, and bearing, South 46 degrees 40 minutes 09 seconds East, a distance of 127.43 feet from a 3/4” iron rebar and cap now set at an angle point on said county line between Doddridge and Harrison Counties, said point being on the lands of West Virginia State Industrial Home (Tax Map 301 Parcel 32, Deed Book 101 Page 570) (Harrison County);

Thence, running with said county line and through said West Virginia State Industrial Home (Parcel 32), lands, South 46 degrees 40 minutes 09 seconds East, for a distance of 407.12 feet to a MAG nail now set;

Thence, partially through said West Virginia State Industrial Home (Parcel 32), lands and other lands of the State of West Virginia (Tax Map 22 Parcel 40) (Doddridge County), South 21 degrees 20 minutes 14 seconds West, passing a chain link fence at a distance of 491.50 feet, for a total distance of 645.89 feet to a point in said chain link fence, which bears, North 21 degrees 20 minutes 14 seconds East, a distance of 442.94 feet from a MAG nail now set in Harrison County Route 50/29 and Doddridge County Route 38;

Thence, leaving said county line between said Doddridge and Harrison Counties, and through said State of West Virginia (Parcel 40) (Doddridge County) and with said chain link fence, South 68 degrees 39 minutes 55 seconds West, a distance of 114.17 feet to a point;

Thence, South 04 degrees 41 minutes 59 seconds East, a distance of 30.17 feet to a point;

Thence, South 01 degrees 18 minutes 54 seconds East, a distance of 10.28 feet to a point;
Thence, South 03 degrees 43 minutes 27 seconds West, a distance of 10.10 feet to a point;

Thence, South 12 degrees 11 minutes 09 seconds West, a distance of 20.48 feet to a point;

Thence, South 55 degrees 59 minutes 51 seconds West, a distance of 37.73 feet to a point;

Thence, South 44 degrees 19 minutes 41 seconds West, a distance of 20.08 feet to a point;

Thence, South 47 degrees 36 minutes 07 seconds West, a distance of 10.05 feet to a point;

Thence, South 52 degrees 08 minutes 56 seconds West, a distance of 40.38 feet to a point;

Thence, South 64 degrees 50 minutes 32 seconds West, a distance of 10.40 feet to a point;

Thence, South 60 degrees 52 minutes 42 seconds West, a distance of 159.19 feet to a point;

Thence, North 88 degrees 14 minutes 48 seconds West, a distance of 29.94 feet to a point;

Thence, South 84 degrees 54 minutes 06 seconds West, a distance of 38.29 feet to a point;

Thence, South 79 degrees 27 minutes 07 seconds West, a distance of 80.87 feet to a point;

Thence, South 81 degrees 09 minutes 06 seconds West, a distance of 9.85 feet to a point;

Thence, South 87 degrees 05 minutes 26 seconds West, a distance of 9.99 feet to a point;

Thence, North 84 degrees 40 minutes 59 seconds West, a distance of 10.30 feet to a point;
Thence, North 01 degrees 54 minutes 25 seconds East, a distance of 19.89 feet to a point;

Thence, North 77 degrees 48 minutes 02 seconds West, a distance of 9.53 feet to a point;

Thence, North 70 degrees 19 minutes 32 seconds West, a distance of 8.19 feet to a point;

Thence, North 63 degrees 03 minutes 51 seconds West, a distance of 8.36 feet to a point;

Thence, North 55 degrees 42 minutes 57 seconds West, a distance of 9.10 feet to a point;

Thence, North 48 degrees 39 minutes 56 seconds West, a distance of 10.24 feet to a point;

Thence, North 38 degrees 36 minutes 40 seconds West, a distance of 39.22 feet to a point;

Thence, North 39 degrees 39 minutes 58 seconds West, a distance of 39.85 feet to a point;

Thence, North 39 degrees 47 minutes 57 seconds West, a distance of 94.34 feet to a point;

Thence, North 34 degrees 34 minutes 50 seconds West, a distance of 49.99 feet to a point;

Thence, North 34 degrees 17 minutes 51 seconds West, a distance of 60.62 feet to a point;

Thence, North 33 degrees 07 minutes 52 seconds West, a distance of 88.90 feet to a point;

Thence, North 33 degrees 22 minutes 22 seconds West, a distance of 69.52 feet to a point;

Thence, North 28 degrees 27 minutes 37 seconds East, a distance of 10.45 feet to a point;
Thence, North 54 degrees 04 minutes 14 seconds East, a distance of 30.48 feet to a point;

Thence, North 57 degrees 37 minutes 32 seconds East, a distance of 19.94 feet to a point;

Thence, North 64 degrees 35 minutes 58 seconds East, a distance of 19.96 feet to a point;

Thence, North 68 degrees 13 minutes 15 seconds East, a distance of 19.08 feet to a point;

Thence, North 71 degrees 59 minutes 48 seconds East, a distance of 40.17 feet to a point;

Thence, North 74 degrees 21 minutes 11 seconds East, a distance of 164.94 feet to a point;

Thence, North 48 degrees 23 minutes 34 seconds East, a distance of 9.24 feet to a point;

Thence, North 37 degrees 13 minutes 32 seconds East, a distance of 81.25 feet to a point;

Thence, North 27 degrees 50 minutes 49 seconds East, a distance of 198.04 feet to a point;

Thence, North 56 degrees 53 minutes 52 seconds East, a distance of 66.32 feet to a point;

Thence, North 44 degrees 13 minutes 13 seconds East, a distance of 20.63 feet to a point;

Thence, North 35 degrees 45 minutes 02 seconds East, a distance of 54.35 feet to a point;

Thence, North 41 degrees 32 minutes 03 seconds West, a distance of 70.20 feet to a point;

Thence, North 31 degrees 14 minutes 26 seconds East, a distance of 278.48 feet to a point;
Thence, North 81 degrees 03 minutes 31 seconds East, a distance of 130.95 feet to the Point of Beginning, containing 14.20 acres, MORE OR LESS, as shown on an exhibit attached hereto and made a part of this description.

The tract or parcel of land herein described being part of the same lands conveyed to West Virginia State Industrial Home in Deed Book 101 Page 570 at the Office of the Clerk, Harrison County, West Virginia and State of West Virginia as recorded in at the Office of the Clerk, Doddridge County, West Virginia.

CHAPTER 249

(Com. Sub. for S. B. 500 - By Senators Baldwin, Mann, Gaunch, Jeffries, Woelfel and Plymale)

[Passed March 7, 2018; in effect from passage.]

AN ACT to amend and reenact section one, chapter 180, Acts of the Legislature, regular session, 1985, authorizing the City of White Sulphur Springs, Greenbrier County, West Virginia, to expend both principal and interest from a special interest-bearing fund.

Be it enacted by the Legislature of West Virginia:

WHITE SULPHUR SPRINGS CAPITAL IMPROVEMENT FUND.

§1. Governing body of City of White Sulphur Springs authorized to establish an interest-bearing capital improvement fund and to expend money as needed therefrom.

The governing body of the City of White Sulphur Springs is hereby authorized and empowered to establish a
special interest bearing fund and to transfer and deposit in the special fund all moneys received by the City of White Sulphur Springs from the sale and exchange of real estate in a deed of exchange between CSX Hotels, Inc., a West Virginia corporation and the City of White Sulphur Springs, dated December 27, 1984, and recorded in the office of the Clerk of the County Commission of Greenbrier County, West Virginia. The governing body is further authorized and empowered to expend both principal and interest from the fund for capital improvements and infrastructure maintenance for the City of White Sulphur Springs.
Proposing an amendment to the Constitution of the State of West Virginia, amending section 51, article VI thereof, relating to the state budget and related matters; providing that total general revenue appropriations to the judiciary may be decreased in the budget bill; providing that the Legislature may not decrease the total general revenue appropriations to the judiciary in the budget bill to an amount that is less than 85 percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals; providing rights and duties of the Chief Justice of the Supreme Court of Appeals relating to appearances before the Legislature and answering inquiries with respect to any budget bill; amending and adding language regarding when the Governor shall submit the budget to the Legislature and matters that may be considered during an extended session to
conform the section to more recent amendments to the constitution; making technical corrections to gender-related language; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2018, which proposed amendment is that section 51, article VI thereof be amended to read as follows:

ARTICLE VI.

§51. Budget and supplementary appropriation bills.

1 The Legislature shall not appropriate any money out of the treasury except in accordance with the provisions of this section.

4 Subsection A – Appropriation Bills

5 (1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

8 Subsection B – Budget Bills

9 (2) On the second Wednesday of February in the year 2021 and every fourth year thereafter and on the second Wednesday of January in all other years, unless a later time in any year be fixed by the Legislature, the Governor shall submit to the Legislature a budget for the next ensuing fiscal year. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and shall show the estimated surplus or deficit of revenues at the end of each fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and
expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding fiscal year; (b) the current assets, liabilities, reserves, and surplus or deficit of the state; (c) the debts and funds of the state; (d) an estimate of the state’s financial condition as of the beginning and end of the fiscal year covered by the budget; and (e) any explanation the Governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the state’s revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the Governor shall determine or as may be prescribed by law: (a) For the Legislature as certified to the Governor in the manner hereinafter provided; (b) for the executive department; (c) for the judiciary department, as provided by law, certified to the Governor by the Auditor; (d) for payment and discharge of the principal and interest of any debt of the state created in conformity with the constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the state under the constitution and laws of the state; and (f) for such other purposes as are set forth in the constitution and in laws made in pursuance thereof.

(4) The Governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the Governor shall determine or as may be prescribed by law; and the presiding officer of each house shall promptly cause the bill to be introduced therein, and such bill shall be known as the “Budget Bill”. The Governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he or she may deliver such an amendment or supplement to the presiding officers of both
houses; and the amendment or supplement shall thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or decreasing any item therein: Provided, That the Legislature may not decrease the total general revenue appropriations to the judiciary in the budget bill to an amount that is less than 85 percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals. Except as otherwise provided in this constitution, the salary or compensation of any public officer shall not be increased or decreased during his or her term of office: Provided, however, That the Legislature shall not increase the estimate of revenue submitted in the budget without the approval of the Governor.

(6) The Chief Justice of the Supreme Court of Appeals, the Governor, and such representatives of the executive departments, boards, officers, and commissions of the state expending or applying for state moneys as have been designated by the Governor for this purpose, shall have the right, and when requested by either house of the Legislature it shall be their duty, to appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.

Subsection C – Supplementary Appropriation Bills

(7) Neither house shall consider other appropriations until the budget bill has been finally acted upon by both houses, and no such other appropriations shall be valid except: in accordance with the provisions following (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object, or purpose therein stated and called therein a supplementary appropriation bill;
(b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as directed in the bill unless it appears from such budget that there is sufficient revenue available.

Subsection D – General Provisions

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor shall issue a proclamation extending the session for such further period as may, in his or her judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during such an extension of a session except the matters detailed in section 14, article VII of this constitution and a provision for the cost thereof.

(9) For the purpose of making up the budget, the Governor shall have the power and it shall be his or her duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions, and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he or she shall direct. The estimates for the legislative department, certified by the presiding officer of each house, and for the judiciary, as provided by law, certified by the Auditor, shall be transmitted to the Governor in such form and at such times as he or she shall direct and shall be included in the budget.

(10) The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies and all institutions applying for state moneys. After such public hearings he or she may, in his or her discretion, revise all estimates except those for the legislative and judiciary departments.
(11) Every budget bill or supplementary appropriation bill passed by a majority of the members elected to each house of the Legislature shall, before it becomes a law, be presented to the Governor. The Governor may veto the bill, or he or she may disapprove or reduce items or parts of items contained therein. If he or she approves, he or she shall sign it and thereupon, it shall become a law. The bill, items or parts thereof, disapproved or reduced by the Governor, shall be returned with his or her objections to each house of the Legislature.

Each house shall enter the objections at large upon its journal and proceed to reconsider. If, after reconsideration, two thirds of the members elected to each house agree to pass the bill, or such items or parts thereof, as were disapproved or reduced, the bill, items or parts thereof, approved by two thirds of such members, shall become law, notwithstanding the objections of the Governor. In all such cases, the vote of each house shall be determined by yeas and nays to be entered on the journal.

A bill, item or part thereof, which is not returned by the Governor within five days (Sundays excepted) after the bill has been presented to him or her shall become a law in like manner as if he or she had signed the bill, unless the Legislature, by adjournment, prevents such return, in which case it shall be filed in the office of the Secretary of State, within five days after such adjournment, and shall become a law; or it shall be so filed within such five days with the objections of the governor, in which case it shall become law to the extent not disapproved by the Governor.

(12) The Legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

(13) In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the constitution, the provisions of this section shall prevail. But nothing herein shall be construed as preventing
the Governor from calling extraordinary sessions of the Legislature, as provided by section 19 of this article, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

(14) If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Judicial Budget Oversight Amendment” and the purpose of the proposed amendment is summarized as follows: “Providing that the total general revenue appropriations to the judiciary may be reduced in the budget bill, and setting forth the required procedures to be followed by the Legislature to enact any decrease in the total general revenue appropriations to the judiciary to an amount that is less than 85 percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget; providing that when requested by the Legislature, the Chief Justice of the Supreme Court of Appeals must appear and be heard and answer inquiries relative any budget bill; and conforming language relating to the introduction of the budget and matters that may be taken up during extended sessions to more recent amendments to the constitution.
Proposing an amendment to the Constitution of the State of West Virginia, amending article VI thereof, by adding thereto a new section, designated section 57, relating to clarifying that nothing in the Constitution secures or protects a right to abortion, and nothing in the Constitution requires the funding of an abortion; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2018, which proposed amendment is that article VI thereof be amended by adding thereto a new section, designated section 57, to read as follows:
ARTICLE VI. THE LEGISLATURE.

§57. No constitutional right to abortion.

Nothing in this Constitution secures or protects a right to abortion or requires the funding of abortion.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as “No Constitutional right to abortion Amendment”, and the purpose of the proposed amendment is summarized as follows: “To amend the West Virginia Constitution to clarify that nothing in the Constitution of West Virginia secures or protects a right to abortion or requires the funding of abortion”.
AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Adjutant General – State Militia, fund 0433, fiscal year 2018, organization 0603, and to the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2018, organization 0620, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated May 20, 2018, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

WHEREAS, It appears from the Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0433, fiscal year 2018, organization 0603, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

62 – Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2018 Org 0603

General Appropriation Fund

6a Military Authority – Surplus (R) ......................... 74899 $ 555,000

Any unexpended balance remaining in the appropriation for Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0546, fiscal year 2018, organization 0620, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

70 – Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2018 Org 0620

General

Appropriation

Revenue

Fund

13a Law Enforcement Training –
Surplus (R) ......................... 83899 $ 495,000

Any unexpended balance remaining in the appropriation for Law Enforcement Training – Surplus (fund 0546, appropriation 83899) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

CHAPTER 2

(Com. Sub. for S. B. 1007 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed May 21, 2018; in effect from passage.]
[Approved by the Governor on May 24, 2018.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2019, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.
Whereas, The Governor submitted to the Legislature the General Revenue Fund, State of Revenues by Source, FY 2019 Official Estimate Revised, dated May 1, 2018, and submitted a Statement of the State Fund, General Revenue, dated May 20, 2018, setting forth therein the estimated cash balance as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, there will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0407, fiscal year 2019, organization 0506, be supplemented and amended to read as follows:

1 TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES

5 57 – Division of Health –

6 Central Office

7 (WV Code Chapter 16)

8 Fund 0407 FY 2019 Org 0506

9 General

10 Appropriation

11 Revenue

12 Fund

13 Personal Services and Employee Benefits............. 00100 $12,446,690
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<th>Item</th>
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<td>Vaccine for Children</td>
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Any unexpended balances remaining in the appropriations for Safe Drinking Water Program (fund 0407, appropriation 18700), Statewide EMS Program Support (fund 0407, appropriation 38300), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407,
appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than $100,000 is for the West Virginia Cancer Coalition; $50,000 shall be expended for the West Virginia Aids Coalition; $100,000 is for Adolescent Immunization Education; $73,065 is for informal dispute resolution relating to nursing home administrative appeals; and $50,000 is for Hospital Hospitality House of Huntington.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to $400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and $11,000 is for the Marshall County Health Department for dental services.

CHAPTER 3

(Com. Sub. for H. B. 101 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed May 21, 2018; in effect June 8, 2018.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §5F-2-1 of the Code of West Virginia, 1931, as amended, as contained in Chapter 105, Acts of the Legislature, Regular Session, 2018; and to amend and reenact §29-1-1 and §29-1-2 of said code, all relating to the
Division of Culture and History continuing as the Department of Arts, Culture and History; providing that the Library Commission and the West Virginia Educational Broadcasting Authority shall be organized within the Department of Arts, Culture and History for administrative support; providing that any references throughout this code to the “Commissioner of Culture and History” means the “Curator of Arts, Culture and History” and any references throughout this code to the “Division of Culture and History” means the “Department of Arts, Culture and History”; organizing the Department of Arts, Culture and History as a separate independent agency within the Executive Branch; continuing the Commissioner of Culture and History as the Curator of Arts, Culture and History; specifying that the curator reports directly to Governor in furtherance of purposes and duties of the department; specifying the role of the curator; specifying that the curator is to represent the department as a full participating member in meetings of department secretaries convened by the Governor.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

1. Public Employees Insurance Agency provided in §5-16-1 et seq. of this code;

2. Governor’s Mansion Advisory Committee provided in §5A-5-1 et seq. of this code;
(3) Commission on Uniform State Laws provided in §29-1A-1 et seq. of this code;

(4) West Virginia Public Employees Grievance Board provided in §6C-3-1 et seq. of this code;

(5) Board of Risk and Insurance Management provided in §29-12-1 et seq. of this code;

(6) Boundary Commission provided in §29-23-1 et seq. of this code;

(7) Public Defender Services provided in §29-21-1 et seq. of this code;

(8) Division of Personnel provided in §29-6-1 et seq. of this code;

(9) The West Virginia Ethics Commission provided in §6B-2-1 et seq. of this code;

(10) Consolidated Public Retirement Board provided in §5-10D-1 et seq. of this code; and

(11) Real Estate Division provided in §5A-10-1 et seq. of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 et seq. of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in §21-3A-1 et seq. of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 et seq. of this code.
(2) Office of Miners’ Health, Safety and Training provided in §22A-1-1 et seq. of this code. The following boards are transferred to the Office of Miners’ Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 et seq. of this code;

(B) Board of Miner Training, Education and Certification provided in §22A-7-1 et seq. of this code; and

(C) Mine Inspectors’ Examining Board provided in §22A-9-1 et seq. of this code.

(3) The West Virginia Development Office provided in §5B-2-1 et seq. of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 et seq. of this code;

(5) Division of Forestry provided in §19-1A-1 et seq. of this code;

(6) Geological and Economic Survey provided in §29-2-1 et seq. of this code; and

(7) Workforce West Virginia provided in chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis.

(8) Office of Energy, within the Development Office, provided in §5B-2F-1 et seq. of this code.
(9) West Virginia Tourism Office and Tourism Commission provided in §5B-2I-1 et seq. of this code; and

(10) Division of Rehabilitation Services provided in §18-10A-1 et seq. of this code.

c) The Economic Development Authority provided in §31-15-1 et seq. of this code is continued as an independent agency within the executive branch.

d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 et seq. of this code is continued as an independent agency within the executive branch.

e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 et seq. of this code and the State Library Commission provided in §10-1-1 et seq. of this code are each continued as separate independent agencies within the Department of Arts, Culture and History, which shall provide administrative support for both entities.

(f) The Division of Culture and History as established in §29-1-1 et seq. of this code is continued as a separate independent agency within the Executive Branch as the Department of Arts, Culture and History. All references throughout this code to the “Division of Culture and History” means the “Department of Arts, Culture and History”.

(g) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in §22B-2-1 et seq. of this code;
(2) Solid Waste Management Board provided in §22C-3-1 et seq. of this code;

(3) Environmental Quality Board, or its successor board, provided in §22B-3-1 et seq. of this code;

(4) Surface Mine Board provided in §22B-4-1 et seq. of this code;

(5) Oil and Gas Inspectors’ Examining Board provided in §22C-7-1 et seq. of this code;

(6) Shallow Gas Well Review Board provided in §22C-8-1 et seq. of this code; and

(7) Oil and Gas Conservation Commission provided in §22C-9-1 et seq. of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in §5-11-1 et seq. of this code;

(2) Bureau for Public Health provided in §16-1-1 et seq. of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 et seq. of this code;

(4) Health Care Authority provided in §16-29B et seq. of this code;

(5) State Commission on Intellectual Disability provided in §29-15-1 et seq. of this code;

(6) Women’s Commission provided in §29-20-1 et seq. of this code; and
(7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General’s Department provided in §15-1A-1 et seq. of this code;

(2) State Armory Board provided in §15-6-1 et seq. of this code;

(3) Military Awards Board provided in §15-1G-1 et seq. of this code;

(4) West Virginia State Police provided in §15-2-1 et seq. of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in §15-5-1 et seq. of this code and Emergency Response Commission provided in §15-5A-1 et seq. of this code;

(6) Sheriffs’ Bureau provided in §15-8-1 et seq. of this code;

(7) Division of Justice and Community Services provided in §15-9A-1 et seq. of this code;

(8) Division of Corrections provided in chapter 25 of this code;

(9) Fire Commission provided in §29-3-1 et seq. of this code;

(10) Regional Jail and Correctional Facility Authority provided in §31-20-1 et seq. of this code; and
(11) Board of Probation and Parole provided in §62-12-1 et seq. of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in chapter 11 of this code;

(2) Racing Commission provided in §19-23-1 et seq. of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;

(4) Insurance Commissioner provided in §33-2-1 et seq. of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 et seq. of this code and §60-2-1 et seq. of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 et seq. of this code;

(7) Lending and Credit Rate Board provided in chapter 47A of this code;

(8) Division of Financial Institutions provided in §31A-2-1 et seq. of this code;

(9) The State Budget Office provided in §11B-2-1 et seq. of this code;

(10) The Municipal Bond Commission provided in §13-3-1 et seq. of this code;

(11) The Office of Tax Appeals provided in §11-10A-1 of this code; and
(12) The State Athletic Commission provided in §29-5A-1 et seq. of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in §17-2A-1 et seq. of this code;

(2) Parkways Authority provided in §17-16A-1 et seq. of this code;

(3) Division of Motor Vehicles provided in §17A-2-1 et seq. of this code;

(4) Driver’s Licensing Advisory Board provided in §17B-2-1 et seq. of this code;

(5) Aeronautics Commission provided in §29-2A-1 et seq. of this code;

(6) State Rail Authority provided in §29-18-1 et seq. of this code; and

(7) Public Port Authority provided in §17-16B-1 et seq. of this code.

(l) Effective July 1, 2011, the Veterans’ Council provided in §9A-1-1 et seq. of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans’ Assistance.

(m) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by the enactment of this chapter.
(n) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(p) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DEPARTMENT OF ARTS, CULTURE AND HISTORY.

§29-1-1. Division of Culture and History continued as the Department of Arts, Culture and History; sections and commissions; purposes; definitions; effective date.
(a) The Division of Culture and History and the office of Commissioner of Culture and History heretofore created are hereby continued as the Department of Arts, Culture and History. The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the Curator of Arts, Culture and History, who shall be the chief executive officer of the department and shall be paid an annual salary as provided in §6-7-2a of this code. The curator so appointed shall have: (1) A bachelor’s degree in one of the fine arts, social sciences, library science or a related field; or (2) four years’ experience in the administration of museum management, public administration, arts, history or a related field.

(b) The department shall consist of five sections as follows:

(1) The arts section;

(2) The archives and history section;

(3) The museums section;

(4) The historic preservation section; and

(5) The administrative section.

(c) The department shall also consist of two citizens commissions as follows:

(1) A Commission on the Arts; and

(2) A Commission on Archives and History.

(d) The curator shall exercise control and supervision of the department and shall be responsible for the projects, programs and actions of each of its sections. The purpose and duty of the department is to advance, foster and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark and care for
historical, prehistorical, archaeological and significant architectural sites, structures and objects in the state; to encourage the promotion, preservation and development of significant sites, structures and objects through the use of economic development activities such as loans, subsidies, grants and other incentives; to coordinate all cultural, historical and artistic activities in state government and at state-owned facilities; to acquire, preserve and classify books, documents, records and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the arts, humanities, culture and history of the state. In the furtherance of these purposes and duties, the curator shall report directly to the Governor as a curator for both the intrinsic and extrinsic value for individuals, communities and the economy of the arts, humanities, culture and history in West Virginia. As such, the curator shall represent the Department of Arts, Culture and History as a full participating member in meetings of the secretaries of the departments created in §5F-1-2 of this code that are convened at the call of the Governor.

(e) The department shall have jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia Science and Culture Center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; “Camp Washington Carver” in Fayette County, as provided in §29-1-14 of this code; and any other sites as may be transferred to or acquired by the department. Notwithstanding any provision of this code to the contrary, including the provisions of article one, chapter five-b of this code, beginning on and after July 1, 2018, the department shall have responsibility for, and control of, all visitor touring and visitor tour guide activities within the state Capitol Building at Charleston.
(f) For the purposes of this article, “commissioner” or “curator” means the Curator of Arts, Culture and History, and “division” or “department” means the Department of Arts, Culture and History. References throughout this code to the “Commissioner of Culture and History” mean the “Curator of Arts, Culture and History”, and references throughout this code to the “Division of Culture and History” mean the “Department of Arts, Culture and History”.

(g) Nothing in this article or any other provision of this code may be construed to mean that the Department of Arts, Culture and History is an executive department created pursuant to §5F-1-2 of this code, nor that the curator is the secretary of an executive department created pursuant to that section.

§29-1-2. General powers of curator.

The curator shall assign and allocate space in all facilities assigned to the department and all space in the building presently known as the West Virginia Science and Culture Center, and any other buildings or sites under the control of the curator, and may, in accordance with the provisions of chapter twenty-nine-a of this code, prescribe rules, regulations and fees for the use and occupancy of said facilities, including tours.

The curator shall coordinate the operations and affairs of the sections and commissions of the department and assign each section or commission responsibilities according to criteria the curator deems most efficient, productive and best calculated to carry out the purposes of this article. The curator shall provide to the fullest extent possible for centralization and coordination of the bookkeeping, personnel, purchasing, printing, duplicating, binding and other services which can be efficiently combined. The curator may establish such other sections for such purposes as he or she deems necessary, and may appoint directors thereof. The curator may appoint a director
of the West Virginia Science and Culture Center. The curator shall serve as the state historic preservation officer.

After consultation with the section directors and the commissions, the curator shall prepare a proposed department budget for submission to the Governor for each fiscal year.

No contract, agreement or undertaking may be entered into by any section of the department which involves the expenditure of funds without the express written approval of the curator as to fiscal responsibility.

The curator shall prepare and submit to the Governor an annual report in accordance with the provisions of §5-1-20 of this code, which report shall include a detailed account of the activities of each section and commission of the department.

The curator shall employ all personnel for the sections, except for persons in the professional positions established within the sections as provided in this article; and shall supply support services to the commissions and to the Governor’s Mansion Advisory Committee.

CHAPTER 4

(Com. Sub. for H. B. 103 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed May 21, 2018; in effect June 5, 2018.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §5A-12-5, §5A-12-6, §5A-12-7, and §5A-12-10 of the Code of West Virginia, 1931, as amended, as contained in Chapter 106, Acts of the
Legislature, Regular Session, 2018; and to amend and reenact §17A-3-23, §17A-3-25, and §17A-3-26 of said code, as contained in Chapter 106, Acts of the Legislature, Regular Session, 2018, all relating to the management and inventory of state vehicles; requiring spending units to prepare and maintain a list of all employees provided a state vehicle that sets forth the specific bona fide noncompensatory business reasons for which the state vehicle is being provided to each employee and submit such list to the fleet management division; modifying vehicle log requirements; modifying reporting requirements; eliminating language related to perjury penalties; and eliminating provisions related to traffic citations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 12. FLEET MANAGEMENT DIVISION.

§5A-12-5. Rule-making authority; emergency rules.

(a) The director shall propose legislative rules as may be necessary to implement this article, in accordance with §29A-3-1 et seq. of this code. Those rules shall include, but not be limited to:

1. Requirements governing the use of state vehicles;
2. Reporting requirements and responsibilities for fleet coordinators;
3. Requirements and responsibilities for each driver or operator of a state vehicle;
4. Information to be collected and maintained on state vehicle log sheets, including information related to mileage, destinations, and purpose of use;
5. The form and manner for each spending unit fleet coordinator to report to the division, including any electronic format as deemed necessary by the director;
(6) The information that each spending unit fleet coordinator shall collect and maintain regarding state vehicle use by the spending unit;

(7) The information for spending unit fleet coordinators to annually report to the division regarding state vehicle use;

(8) Requirements and policies governing commuting in and taking home state vehicles; and

(9) Requirements and policies governing volunteer and non-public employee drivers.

(b) All rules of the Fleet Management Office in effect on the effective date of this article shall remain in effect until they are amended, replaced, or repealed: Provided, That these rules shall expire on July 1, 2021, if not sooner superseded.

(c) On or before June 15, 2018, the director shall propose emergency legislative rules which may amend or modify existing legislative rules governing the use of state vehicles pursuant to §5A-12-1 et seq. of this code to implement the provisions of this article.

§5A-12-6. Vehicle operator regulations; training.

(a) Each operator of a state vehicle, shall maintain the vehicle logs to the level of detail required by the division through legislative rules, and as may be required by the spending unit.

(b) Each operator of a state vehicle shall comply with the laws, rules, and policies governing state vehicle use, including spending unit rules and policies.

(c) Prior to operating a state vehicle, each operator shall be required to take such training courses as may be required by the Board of Risk and Insurance Management, the Travel Management Office, the Fleet Management Division, and the spending unit.
(d) If any public employee or public official fails to comply with any rule or regulation for state vehicle use, the spending unit may require that the individual attend training, be restricted from using state vehicles, or be prohibited from using state vehicles: Provided, That nothing in this section authorizes the division to restrict the use of state vehicles except for those employees under its control.

§5A-12-7. Spending unit duties and responsibilities.

(a) Every spending unit shall report all vehicles and equipment requiring a state license plate, including those vehicles with a rating of more than one ton, those requiring a commercial driver’s license to operate, and all-terrain vehicles, as fixed assets in the centralized accounting system maintained by the Enterprise Resource Planning Board.

(b) Every spending unit that owns state vehicles shall annually affirm to the State Agency for Surplus Property on or before July 15 of each year, that the vehicles and assets reported to the centralized accounting system as required by §5A-12-7(a) of this code are accurate and current.

(c) Every spending unit shall prepare and maintain a list of all employees who are provided a state vehicle. The list shall set forth the specific bona fide noncompensatory business reasons for which the state vehicle is being provided to each employee. Spending units shall submit the list required by this section to the division, which shall act solely as a repository for the information, on or before July 1, 2018, and shall update the list on or before July 1 of each year thereafter.

§5A-12-10. Annual reports by spending units.

(a) Each spending unit that owns or operates a state vehicle, rents vehicles for a state purpose, or reimburses an employee for personal vehicle use, shall annually report the Fleet Management Division, beginning on or before
October 31, 2018, and on or before October 31 each year thereafter, in the manner required by this article and by legislative rule.

(b) Each spending unit that owns or leases a state vehicle or rents or reimburses an employee for personal vehicle use, shall periodically compile and maintain the individual specific vehicle records of each state vehicle, and all records of vehicle rental and private vehicle use expenditures, for not less than three years, or as may be required by the division or the State Auditor pursuant to §5A-12-13 of this code.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions, or institutions, except vehicles used by the Governor, Treasurer, not to exceed eight vehicles operated by investigators of the Office of the Attorney General, three vehicles per elected office of the Board of Public Works not otherwise specified, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by natural resources police officers of the Division of Natural Resources, not to exceed 10 vehicles operated by the arson investigators of the Office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services, not to exceed 16 vehicles operated by inspectors of the Office of the Alcohol
Beverage Control Commissioner, vehicles operated by the West Virginia Wing of the Civil Air Patrol, and vehicles operated by probation officers employed under the Supreme Court of Appeals may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line, and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight: Provided, That beginning January 1, 2019, state vehicle license plates shall be gold with blue lettering.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall also be green with the number in white: Provided, That beginning January 1, 2019, state vehicle license plates shall be gold with blue lettering.

(b) Registration plates issued to vehicles owned by counties shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom.

(c) Registration plates issued to a city or municipality shall be white on blue with the word “City” on top and the words “West Virginia” on the bottom.

(d) Registration plates issued to a city or municipality law-enforcement department shall include blue lettering on a white background with the words “West Virginia” on top of the plate and shall be further designed by the commissioner to include a law-enforcement shield together with other insignia or lettering sufficient to identify the motor vehicle as a municipal law-enforcement department motor vehicle. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to
Counties, municipalities, and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles.

(e) (1) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs’ association with the word “Sheriff” on top of the plate and the words “West Virginia” on the bottom. The plate shall contain a gold shield representing the sheriff’s star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of $10 for each vehicle submitted by July 1, 2002.

(2) Registration plates issued to vehicles operated by the West Virginia Wing of the Civil Air Patrol shall be designed by the commissioner in cooperation with the Civil Air Patrol and include the words “Civil Air Patrol” on the plate. The Civil Air Patrol shall provide the commissioner with a list of vehicles operated by the Civil Air Patrol, unless otherwise provided in this section, and a fee of $10 for each new vehicle for which a Civil Air Patrol license plate is requested.

(f) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency or nonstate government entity entitled to registration plates at no charge in accordance with the motor vehicle laws: Provided, That where the institutions of higher education opt to have their logo displayed on the state license plate, such institution shall bear any additional costs of those added features: Provided, however, That no public service districts or designated nongovernmental organizations shall be issued a license plate designated for vehicles owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions, or institutions.
(g) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

(h) The commissioner is authorized to issue a maximum of five Class A license plates to be used on vehicles assigned to the Division of Motor Vehicles investigators for commercial driver examination fraud investigation and driver’s license issuance fraud detection and fraud prevention.

(i) The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the State of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used only for official undercover work conducted by a drug and violent crime task force.

(j) The commissioner is authorized to issue 20 Class A license plates to the Criminal Investigation Division of the Department of Revenue for use by its investigators.

(k) The commissioner may issue a maximum of 10 Class A license plates to the Division of Natural Resources for use by natural resources police officers. The commissioner shall designate the color and design of the registration plates to be displayed on the front and the rear of all other state-owned vehicles owned by the Division of Natural Resources and operated by natural resources police officers.

(l) The commissioner is authorized to issue an unlimited number of Class A license plates to the Commission on Special Investigations for state-owned vehicles used for official undercover work conducted by the Commission on Special Investigations.
(m) The commissioner is authorized to issue a maximum of two Class A plates to the Division of Protective Services for state-owned vehicles used by the Division of Protective Services in fulfilling its mission.

(n) The commissioner is authorized to issue Class A registration plates for vehicles used by the Medicaid Fraud Control Unit created by §9-7-7 of this code.

(o) The commissioner is authorized to issue Class A registration plates for vehicles used by the West Virginia Insurance Fraud Unit created by §33-41-8 of this code.

(p) No other registration plate may be issued for, or attached to, any state-owned vehicle.

(q) The Commissioner of Motor Vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned or leased vehicles.

(r) The commissioner shall, after consultation with the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code and the Enterprise Resource Planning Board established pursuant to §12-6D-1 et seq. of this code, develop and adopt a standardized naming convention for the title, registration, and licensing of state vehicles, pursuant to §17A-3-25 of this code. The naming convention adopted shall be consistent with the naming convention adopted for the centralized accounting system as maintained by the Enterprise Resource Planning Board for the purpose of creating and maintaining an accurate and up to date inventory of the state vehicle fleet.

(s) It is the duty of each office, department, bureau, commission, or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.

(t) The commissioner may issue special registration plates for motor vehicles titled in the name of the Division of Public Transit or in the name of a public transit authority
as defined in this subsection and operated by a public transit authority or a public transit provider to transport persons in the public interest. For purposes of this subsection, “public transit authority” means an urban mass transportation authority created pursuant to §8-27-1 et seq. of this code or a nonprofit entity exempt from federal and state income taxes under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large. The special registration plate shall be designed by the commissioner and shall display the words “public transit” or words or letters of similar effect to indicate the public purpose of the use of the vehicle. The special registration plate shall be issued without charge.

(u) Each green registration plate with white letters affixed to a state vehicle, and each corresponding title and registration certificate for all state vehicles, other than those vehicles with Class A registration plates as provided in this section, terminates at midnight on December 31, 2018. Each spending unit assigned a state vehicle that is required to display a state vehicle license plate and registration shall obtain a new title, new registration card, and new state vehicle license plate prior to January 1, 2019: Provided, that no state vehicle license plate shall be issued unless the spending unit has provided an affirmative statement that the vehicle is a state asset recorded in the central accounting system as maintained by the Enterprise Resource Planning Board, and the same has been verified by the commissioner, as required by §17A-3-25 of this code. When new registrations are issued pursuant to this article and for subsequent, non-Class A registrations of state owned or leased vehicles, the state vehicle registration plate and certificate shall be valid for a period of not more than 24 months and shall be required to be renewed every two years.

(v) The commissioner is authorized to prepare and promulgate emergency rules, pursuant to §29A-3-1 et seq. of this code in order to implement amendments to this section.
(w) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $100. Magistrates have concurrent jurisdiction with circuit courts for the enforcement of this section.

§17A-3-25. State vehicle title, registration and relicensing project of 2018; emergency and legislative rules

(a) On or before July 1, 2018, the commissioner shall coordinate with the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code and the Enterprise Resource Planning Board established pursuant to §12-6D-1 et seq. of this code and other applicable agencies, to develop a standardized titling and registration system for state vehicles. To the extent practicable, the standardization of vehicle title, registration, and state vehicle license plates shall conform to the state’s central accounting system maintained by the Enterprise Resource Planning Board. The standardization of state vehicle titles, registrations, and license plates, as described in this section, shall be known as the “State Vehicle Title, Registration, and Relicensing Project of 2018”. Every spending unit shall comply with the provisions of this section, and §17A-3-23 of this code.

(b) The commissioner, in coordination with the Fleet Management Division, shall develop a standard system for identifying and recording the names of agencies, offices, or spending units to which each state vehicle is assigned, or registered, and such standard naming conventions shall be developed to align with the state’s central accounting system, and the centralized state vehicle inventory system. The commissioner shall propose legislative and emergency rules, pursuant to §29A-3-1 et seq. of this code, establishing those standard naming conventions for the registration, titling, and licensing of every state vehicle, and assigning by rule a list of the standardized naming conventions for each spending unit for the purpose of issuing new title, registration, and license plates to each state vehicle by December 31, 2018.

(c) Once the commissioner has promulgated legislative and emergency rules as authorized pursuant to subsection (b)
of this section, and not later than September 1, 2018, the division shall begin to issue the standardized title, registration, and state vehicle license plates for all state vehicles.

(d) Any spending unit applying to license or relicense a state vehicle pursuant to this section shall include with the application an affirmative statement that the vehicle is a state asset recorded in the central accounting system as maintained by the Enterprise Resource Planning Board before the commissioner is required to issue any motor vehicle registration plates: Provided, That for leased vehicles, the spending unit shall affirm to the commissioner that the vehicle is leased and not required to be recorded in the state central accounting system.

(e) The commissioner shall confirm that each vehicle for which an agency applies for a license, title, or registration is properly listed within the centralized accounting system as being a vehicle owned by a state agency before processing the application.

(f) The commissioner is authorized, by legislative and emergency rule, to establish a procedure whereby the commissioner shall reject the application for a state vehicle title, registration and state vehicle license plate if that application does not conform to the standard naming convention requirements. The commissioner shall provide by rule for the reasonable remedy, correcting of errors, or to compel compliance with the standard naming conventions.

(g) At midnight on December 31, 2018, all green state vehicle license plates with white lettering affixed to vehicles shall expire. The commissioner, in coordination with the Fleet Management Division, shall provide notice to each spending unit, and advertise as deemed appropriate, to inform the fleet coordinators, as defined in §5A-12-3 of this code, that such license plates expire and the procedure for being issued new titles, registrations, and license plates pursuant to this article. The head of each spending unit with state vehicles shall cooperate and comply with the requirements of the State Vehicle Title, Registration, and Relicensing Project of 2018, and the centralized accounting system.
Upon receipt of the new title, registration, and license plates, each spending unit shall enter the appropriate information into the state’s central accounting system maintained by the Enterprise Resource Planning Board, in such detail and specificity as required by the board, the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code.

§17A-3-26. Enforcement; report.

Beginning January 1, 2019, any state vehicle in this state with a green state license plate with white lettering is in violation of this article.

CHAPTER 5

(Com. Sub. for S. B. 1005 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed May 21, 2018; in effect e 7, 2018.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §30-41-2 of the Code of West Virginia, 1931, as amended, as contained in Chapter 177, Acts of the Legislature, Regular Session, 2018, related to creating the Physical Therapy Licensure Compact Act; establishing commission rule-making authority; providing for legal enforcement of compact rules and provisions; establishing proper venue; and retaining sovereign immunity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. PHYSICAL THERAPY LICENSURE COMPACT ACT.

§30-41-2. Authority to execute compact.
The West Virginia Board of Physical Therapy, on behalf of the State of West Virginia, is hereby authorized to execute a compact in substantially the following form with any one or more of the states of the United States, and the Legislature hereby signifies in advance its approval and ratification of such compact:

“PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

2. Enhance the states’ ability to protect the public’s health and safety;

3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;

4. Support spouses of relocating military members;

5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state’s practice standards.
SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. ‘Active duty military’ means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211.

2. ‘Adverse action’ means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. ‘Alternative program’ means a non-disciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. ‘Compact privilege’ means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. ‘Continuing competence’ means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

6. ‘Data system’ means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

7. ‘Encumbered license’ means a license that a physical therapy licensing board has limited in any way.
8. ‘Executive Board’ means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

9. ‘Home state’ means the member state that is the licensee’s primary state of residence.

10. ‘Investigative information’ means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. ‘Jurisprudence requirement’ means the assessment of an individual’s knowledge of the laws and rules governing the practice of physical therapy in a state.

12. ‘Licensee’ means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. ‘Member state’ means a state that has enacted the Compact.

14. ‘Party state’ means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. ‘Physical therapist’ means an individual who is licensed by a state to practice physical therapy.

16. ‘Physical therapist assistant’ means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

17. ‘Physical therapy,’ ‘physical therapy practice,’ and ‘the practice of physical therapy’ mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

18. ‘Physical Therapy Compact Commission’ or ‘Commission’ means the national administrative body
whose membership consists of all states that have enacted the Compact.

19. ‘Physical therapy licensing board’ or ‘licensing board’ means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. ‘Remote state’ means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. ‘Rule’ means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. ‘State’ means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a state must:

1. Participate fully in the Commission’s data system, including using the Commission’s unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3B;
5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.

B. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and to submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. § 534 and 42 U.S.C. § 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

D. Member states may charge a fee for granting a compact privilege.

SECTION 4. COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:

1. Hold a license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with Section 4D, G and H;

4. Have not had any adverse action against any license or compact privilege within the previous 2 years;

5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);
6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and

8. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of Section 4A to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state’s regulatory authority. A remote state may, in accordance with due process and that state’s laws, remove a licensee’s compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home-state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the
requirements of Section 4A to obtain a compact privilege in any remote state.

G. If a licensee’s compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two years have elapsed from the date of the adverse action.

H. Once the requirements of Section 4G have been met, the license must meet the requirements in Section 4A to obtain a compact privilege in a remote state.

SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

A. Home of record;

B. Permanent Change of Station (PCS); or

C. State of current residence if it is different than the PCS state or home of record.

SECTION 6. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

B. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.
C. Nothing in this Compact shall override a member state’s decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state’s laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:

1. Take adverse actions as set forth in Section 4D against a licensee’s compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.
F. Joint Investigations:

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION.

A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings:

1. Each member state shall have and be limited to one delegate selected by that member state’s licensing board.

2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical
therapist assistant, public member, or the board administrator.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates’ participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;
6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact and to establish the Commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees comprising of members, state regulators, state legislators or their representatives, and consumer representatives, and
such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law-enforcement agencies;

17. Establish and elect an Executive Board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board

The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact:

1. The Executive Board shall be comprised of nine members:

   a. Seven voting members who are elected by the Commission from the current membership of the Commission;

   b. One ex-officio, nonvoting member from a recognized national physical therapy professional association; and

   c. One ex-officio, nonvoting member from a recognized membership organization of the physical therapy licensing boards.

2. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.
5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

E. Meetings of the Commission:

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 9.

2. The Commission or the Executive Board or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Board or other committees of the Commission must discuss:

a. Non-compliance of a member state with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees, or other matters related to the Commission’s internal personnel practices and procedures;
c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law-enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal,
subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission:

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification:
1. The members, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person’s intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did
not result from the intentional or willful or wanton misconduct of that person.

SECTION 8. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Non-confidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial; and
6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.
E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 9. RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute, resolution, or refusal to adopt the rules as promulgated by the state licensing authority, in the same manner used to adopt the Compact, within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the
publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least 25 persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least 25 members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing:

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and
testify at the hearing no fewer than five business days before
the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing
each person who wishes to comment a fair and reasonable
opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording
will be made available on request.

4. Nothing in this section shall be construed as requiring
a separate hearing on each rule. Rules may be grouped for
the convenience of the Commission at hearings required by
this section.

I. Following the scheduled hearing date, or by the close
of business on the scheduled hearing date if the hearing was
not held, the Commission shall consider all written and oral
comments received.

J. If no written notice of intent to attend the public
hearing by interested parties is received, the Commission
may proceed with promulgation of the proposed rule
without a public hearing.

K. The Commission shall, by majority vote of all
members, take final action on the proposed rule and shall
determine the effective date of the rule, if any, based on the
rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the
Commission may consider and adopt an emergency rule
without prior notice, opportunity for comment or hearing,
provided that the usual rulemaking procedures provided in
the Compact and in this section shall be retroactively
applied to the rule as soon as reasonably possible, in no
event later than 90 days after the effective date of the rule.
For the purposes of this provision, an emergency rule is one
that must be adopted immediately in order to:
1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule;

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight:

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact’s purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law subject to the limitations set forth herein.
2. All courts shall take judicial notice of the Compact and the rules, if approved by the Legislature, in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination:

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

   a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

   b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from, the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor,
the majority and minority leaders of the defaulting state’s legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

C. Dispute Resolution:

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement:

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default, in
In order to enforce compliance with the provisions of the Compact, its promulgated rules, and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE; ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission’s initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same:

1. A member state’s withdrawal shall not take effect until six months after enactment of the repealing statute.
2. Withdrawal shall not affect the continuing requirement of the withdrawing state’s physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.”
AN ACT to amend and reenact §5H-1-2 of the Code of West Virginia, 1931, as amended, as contained in Chapter 211, Acts of the Legislature, Regular Session, 2018, relating to the West Virginia Fire, EMS, and Law-Enforcement Officer Survivor Benefit Act; creating a retroactive effective date; deleting a one-payment requirement for the benefit; requiring benefit distribution be consistent with the intestate statutes when no beneficiary documents are found; requiring the fire, EMS, or law-enforcement program to provide documentation of surviving spouse, descendants or parents of the decedent; and correcting terms for consistency of requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5H. SURVIVOR BENEFITS.

ARTICLE 1. WEST VIRGINIA FIRE, EMS, AND LAW-ENFORCEMENT OFFICER SURVIVOR BENEFIT ACT.

§5H-1-2. Death benefit for survivors.

(a) In the event a firefighter, EMS, or law-enforcement provider dies as a proximate result of the performance of, his or her duties, the department chief, within 30 days from the date of death shall submit certification of the death to the Governor’s Office.
(b) This act includes both paid and volunteer fire, EMS, and law-enforcement personnel acting in the performance of his or her duties of any fire, EMS, or law-enforcement department certified by the State of West Virginia.

(c) A firefighter, EMS, or law-enforcement provider is considered to be acting in the performance of his or her duties for the purposes of this act when he or she is participating in any role of a fire, EMS, or law-enforcement department function. This includes training, administration meetings, fire, EMS, or law-enforcement incidents, service calls, apparatus, equipment or station maintenance, fundraisers, and travel to or from such functions.

(d) Travel includes riding upon or in any apparatus or vehicle which is owned or used by the fire, EMS, or law-enforcement department, or any other vehicle going to or directly returning from a firefighter’s home, place of business, or other place where he or she shall have been prior to participating in a fire, EMS, or law-enforcement department function, or upon the authorization of the chief of the department, agency head, or other person in charge.

(e) Certification shall include the name of the certified fire, EMS, or law-enforcement program, the name of the deceased firefighter, EMS, or law-enforcement provider, the name or names and address of the beneficiary or beneficiaries, any documentation designating a beneficiary or beneficiaries, and setting forth the circumstances that qualify the deceased individual for death benefits under this act. Upon receipt of the certification from the certified fire, EMS, or law-enforcement program, the state shall, from moneys from the State Treasury, General Fund, pay to the certified fire, EMS, or law-enforcement program the sum of $100,000 in the name of the beneficiary or beneficiaries of the death benefit. Within five days of receipt of this sum from the state, the fire, EMS, or law-enforcement program certified by the state shall pay the sum as a benefit to the surviving designated beneficiary or beneficiaries. If there is no surviving designated beneficiary, then the sum shall be
paid as if the decedent had designated as beneficiaries those persons who are entitled to inherit the decedent’s intestate estate, in the proportions established by §42-1-3 and §42-1-3a of this Code. It is the responsibility of the certified fire, EMS, or law-enforcement program to document the beneficiary or beneficiaries above mentioned for purposes of reporting to the Governor’s Office.

(f) Any death ruled by a physician to be a result of an injury sustained during any of the above mentioned performance of fire department, EMS, or law-enforcement duties will be eligible for this benefit, even if this death occurs at a later time.

(g) Those individuals who are covered by this article are eligible for only one state death benefit, paid pursuant to the provisions of this section, regardless of the amount.

(h) Every department or agency head employing persons to which this article applies shall provide notice of the benefit provided hereby to such employees and encourage covered employees to provide a written designation of beneficiary to be maintained in the employee’s personnel file.

(i) Any person making application for certification as a firefighter to which this section applies shall provide a written designation of beneficiary using forms and procedures prescribed by the State Fire Marshal. Any person making application for emergency medical services personnel certification to which this section applies shall provide a written designation of beneficiary using forms and procedures prescribed by the Commissioner of the Bureau for Public Health.

(j) The operation of the amendments to this section enacted during the 2018 Regular Session and 2018 First Extraordinary Session of the Legislature shall be effective retroactively to January 1, 2018.
AN ACT to amend and reenact §15-9A-4 of the Code of West Virginia, 1931, as amended, as contained in Chapter 216, Acts of the Legislature, Regular Session, 2018, relating to modifying the type of businesses and establishments required to post human trafficking assistance notices; modifying the criminal penalties for failure to comply with posting of notices once given notice of lawful duty to post; providing that a business or establishment that does not correct a violation within 30 days from the receipt of notice is guilty of a misdemeanor and, upon a first conviction thereof, shall be fined not more than $250; and providing that a second or subsequent conviction is punishable by a fine of not less than $250 nor more than $500.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.


(a) For the purpose of assisting victims of human trafficking to obtain help and services, the following businesses and establishments shall post a notice which meets the requirements of this section:

(1) All locations licensed by the Alcohol Beverage Control Commissioner that permit on-premises
consumption of alcoholic beverages, pursuant to §60-7-1 et seq. of this code;

(2) Exotic entertainment facilities, which are facilities featuring live nude dancing, nude service personnel, or live nude entertainment;

(3) Primary airports;

(4) Passenger rail stations;

(5) Bus stations;

(6) Locations where gasoline and diesel fuel are sold;

(7) Emergency departments within hospitals;

(8) Urgent care centers;

(9) Locations at which farm labor contractors and day haulers work, if a physical facility is available at those locations upon or in which notice can be posted;

(10) Privately operated job recruitment centers;

(11) Rest areas located along interstate highways in this state, operated by the Division of Highways;

(12) Hotels; and

(13) Any other business or establishment that the director determines, by legislative rule, is an effective location to provide notice to victims of human trafficking.

(b) Requirements for posting of notice. — The notice required by this section must be posted in English, Spanish, and any other language determined by legislative rule by the director. The notice must be posted in each public restroom for the business or establishment, and either in a conspicuous place near the public entrance of the business or establishment or in another location in clear view of the
public and employees, where similar notices are customarily posted.

(c) The director shall provide hyperlinks on the division’s website to downloadable notices that are eight and one-half inches by 11 inches in size that provide information regarding the National Human Trafficking Resource Center and display the telephone number for the National Human Trafficking Resource Center hotline. These downloadable notices must be available in English, Spanish, and any other language determined by legislative rule by the director. These downloadable notices, if printed and posted, will satisfy the notice posting requirements of this section.

(d) Any law-enforcement officer, representative of the Bureau for Public Health or of a county health department, representative of the State Alcoholic Beverage Control Commissioner, representative of the Division of Labor, or other state representative inspecting a business or establishment or otherwise lawfully acting under his or her state authority, may notify, in writing, any business or establishment that it has failed to comply with the requirements of this section. The written notice must be delivered to the noncomplying business or establishment by certified mail, with return receipt requested. A business or establishment that does not correct a violation within 30 days from the receipt of the written notice is guilty of a misdemeanor and, upon a first conviction thereof, shall be fined not more than $250; and upon a second or subsequent conviction, shall be fined not less than $250 nor more than $500.

(e) For the purposes of this section, and unless a different meaning is plainly required:

(1) “Day hauler” means any person who is employed by a farm labor contractor to transport, or who, for a fee,
transports, by motor vehicle, workers to render personal
services in connection with the production of any farm
products to, for, or under the direction of a third person:
Provided, That such term shall not include a person engaged
in the production of agricultural products;

(2) “Farm labor contractor” means any person who, for
a fee, employs workers to render personal services in
connection with the production of any farm products to, for,
or under the direction of a third person, or who recruits,
solicits, supplies, or hires workers on behalf of an employer
engaged in the growing or producing of farm products, and
who, for a fee, provides in connection therewith one or more
of the following services: Furnishes board, lodging, or
transportation for those workers; supervises, times, checks,
counts, weighs, or otherwise directs or measures their work;
or disburses wage payments to such persons: Provided, That
such term shall not include a person engaged in the
production of agricultural products;

(3) “Hospital” shall have the same meaning as set forth
in §16-2D-2(21) of this code;

(4) “Hotel” means any establishment which offers
overnight accommodations to the public in exchange for a
monetary payment;

(5) “Primary airport” shall have the same meaning as set
forth in 49 U.S.C. § 47102(16); and

(6) “Production of agricultural products” means raising,
growing, harvesting, or storing of crops; feeding, breeding,
or managing livestock, equine, or poultry; producing or
storing feed for use in the production of livestock.
CHAPTER 8

(Com. Sub. for S. B. 1006 - By Senators Carmichael
(Mr. President) and Preziosso)
[By Request of the Executive]

[Passed May 21, 2018; in effect from passage.]
[Approved by the Governor on June 7, 2018.]

AN ACT to amend and reenact §11A-3-19, §11A-3-20, §11A-3-27, §11A-3-55, and §11A-3-59 of the Code of West Virginia, 1931, as amended, all relating generally to purchasers of property tax liens securing a deed; amending the time frame during which a lien purchaser must provide certain information and fees to the Auditor to allow service of notice to redeem; amending the date by which a purchaser must provide notice to the Auditor that a lien purchased at a sheriff’s sale was subject to an erroneous assessment or was nonexistent; amending the time frame during which the Auditor must execute and deliver deeds; and amending the time frame during which the Auditor must provide or publish notice to redeem a tax lien sold at a commissioner’s sale.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHewed AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-19. What purchaser must do before the deed can be secured.

1 (a) At any time after August 31 of the year following the sheriff’s sale, and on or before October 31 of the same year, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate subject to the tax lien or liens purchased, shall:
(1) Prepare a list of those to be served with notice to redeem and request the State Auditor to prepare and serve the notice as provided in §11A-3-21 and §11A-3-22 of this code;

(2) When the real property subject to the tax lien is classified as Class II property, provide the State Auditor with the physical mailing address of the property that is subject to the tax lien or liens purchased;

(3) Provide the State Auditor with a list of any additional expenses incurred after January 1 of the year following the sheriff’s sale for the preparation of the list of those to be served with notice to redeem, including proof of the additional expenses in the form of receipts or other evidence of reasonable legal expenses incurred for the services of any attorney who has performed an examination of the title to the real estate and rendered written documentation used in the preparation of the list of those to be served with the notice to redeem;

(4) Deposit with the State Auditor a sum sufficient to cover the costs of preparing and serving the notice; and

(5) Present the purchaser’s certificate of sale, or order of the county commission where the certificate has been lost or wrongfully withheld from the owner, to the State Auditor.

If the purchaser fails to meet these requirements he or she shall lose all the benefits of his or her purchase.

(b) If the person requesting preparation and service of the notice is an assignee of the purchaser he or she shall, at the time of the request, file with the State Auditor a written assignment to him or her of the purchaser’s rights, executed, acknowledged, and certified in the manner required to make a valid deed.

(c) Whenever any certificate given by the sheriff for a tax lien on any land, or interest in the land sold for delinquent taxes, or any assignment of the lien is lost or
wrongfully withheld from the rightful owner of the land and the land or interest has not been redeemed, the county commission may receive evidence of the loss or wrongful detention and, upon satisfactory proof of that fact, may cause a certificate of the proof and finding, properly attested by the State Auditor, to be delivered to the rightful claimant and a record of the certificate shall be duly made by the county clerk in the recorded proceedings of the commission.

§11A-3-20. Refund to purchaser of payment made at sheriff’s sale where property is subject of an erroneous assessment or is otherwise nonexistent.

If, by October 31 of the year following payment of the amount bid at a sheriff’s sale, the purchaser discovers that the lien purchased at that sale is the subject of an erroneous assessment or is otherwise nonexistent, the purchaser shall submit the abstract or certificate of an attorney at law that the property is the subject of an erroneous assessment or is otherwise nonexistent. Upon receipt of the abstract or certificate, the sheriff shall cause any money paid to be refunded. Upon refund, the sheriff shall inform the assessor and the State Auditor of the erroneous assessment for the purpose of having the assessor correct the error. For failure to meet this requirement, the purchaser shall lose all benefits of his or her purchase.

§11A-3-27. Deed to purchaser; record.

(a) If the real estate described in the notice is not redeemed within the time specified in the notice, then from April 1 of the second year following the sheriff’s sale until the expiration of the lien evidenced by a tax certificate of sale as provided in §11A-3-18 of this code, the State Auditor or his or her deputy shall upon request of the purchaser make and deliver to the clerk of the county commission, a quitclaim deed for the real estate. The purchaser’s right to a tax deed shall be forfeited if the deed is not requested within the 18-month period set forth in §11A-3-18 of this code. The deed shall provide in form or effect as follows:
This deed made this ______ day of ____________, 20____, by and between _________________, State Auditor, West Virginia, (or by and between _________________, a commissioner appointed by the circuit court of ______________ County, West Virginia) grantor, and _____________, purchaser, (or __________________, heir, devisee or assignee of _______________________, purchaser), grantee, witnesseth, that:

Whereas, In pursuance of the statutes in such case made and provided, _________________, Sheriff of ______________ County, (or ______________, deputy for ______________, Sheriff of ___________ County), (or ______________, collector of ______________ County), did, in the month of ____________, in the year 20____, sell the tax lien(s) on real estate, hereinafter mentioned and described, for the taxes delinquent thereon for the year (or _____________) 20____, and ______________, (here insert name of purchaser) for the sum of $___________, that being the amount of purchase money paid to the sheriff, did become the purchaser of the tax lien(s) on such real estate (or on ________ acres, part of the tract or land, or on an undivided ____________ interest in such real estate) which was returned delinquent in the name of __________________; and

Whereas, The State Auditor has caused the notice to redeem to be served on all persons required by law to be served therewith; and

Whereas, The tax lien(s) on the real estate so purchased has not been redeemed in the manner provided by law and the time for redemption set in such notice has expired;

Now, therefore, the grantor, for and in consideration of the premises and in pursuance of the statutes, doth grant unto _________________, grantee, his or her heirs and assigns forever, the real estate on which the tax lien(s) so purchased existed, situate in the county of _________________,
bounded and described as follows:

Witness the following signature:

State Auditor.

(b) The State Auditor shall execute and deliver a deed within 120 days after the person entitled to the deed requests the execution of the deed, except when directed to do otherwise under §11A-3-28 of this code.

(c) For the execution of the deed and for all the recording required by this section, a fee of $50 and the recording and transfer tax expenses shall be charged, to be paid by the grantee upon delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk of the county commission in the deed book in the clerk’s office, together with any assignment from the purchaser, if one was made, the notice to redeem, the return of service of the notice, the affidavit of publication, if the notice was served by publication, and any return receipts for notices sent by certified mail.

(d) The State Auditor shall appoint employees of his or her office to act as his or her designee to effect the purposes of this section.

§11A-3-55. Service of notice.

As soon as the deputy commissioner has prepared the notice provided for in §11A-3-54 of this code, he shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of §11A-3-52 of this code. Such notice shall be mailed and, if necessary, published at least 45 days prior to the first day a deed may be issued following the deputy commissioner’s sale.

The notice shall be served upon all such persons residing or found in the state in the manner provided for
serving process commencing a civil action or by certified mail, return receipt requested. The notice shall be served on or before the thirtieth day following the request for such notice.

If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he shall be served at such address by certified mail, return receipt requested.

If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth above, and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of such notice, and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the auditor in his office, together with any return receipts for notices sent by certified mail.

In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the same time the deputy commissioner issues the required notices by certified mail, the deputy commissioner shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, addressed to “Occupant”, to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the property, pursuant to the provisions of §11A-3-52 of this code. Where the mail is not
deliverable to an address at the physical location of the subject property, the copy of the notice shall be sent to any other mailing address that exists to which the notice would be delivered to an occupant of the subject property.

§11A-3-59. Deed to purchaser; record.

If the real estate described in the notice is not redeemed within the time specified therein, but in no event prior to 30 days after notices to redeem have been personally served, or an attempt of personal service has been made, or such notices have been mailed or, if necessary, published in accordance with the provisions of §11A-3-55 of this code, following the deputy commissioner’s sale, the deputy commissioner shall, upon the request of the purchaser, make and deliver to the person entitled thereto a quitclaim deed for such real estate in form or effect as follows:

This deed, made this _____ day of _____________, 20___, by and between __________, deputy commissioner of delinquent and nonentered lands of _____________ County, West Virginia, grantor, and __________________, purchaser (or _______________, heir, devisee, assignee of _________________, purchaser) grantee, witnesseth, that

Whereas, in pursuance of the statutes in such case made and provided, _________________, deputy commissioner of delinquent and nonentered lands of _________________ County, did, on the _____ day of _____________, 20___, sell the real estate hereinafter mentioned and described for the taxes delinquent thereon for the year(s) 20_____, (or as nonentered land for failure of the owner thereof to have the land entered on the land books for the years ____________, or as property escheated to the State of West Virginia, or as waste or unappropriated property) for the sum of
$____________________, that being the amount of purchase money paid to the deputy commissioner, and __________ (here insert name of purchaser) did become the purchaser of such real estate, which was returned delinquent in the name of _______________ (or nonentered in the name of, or escheated from the estate of, or which was discovered as waste or unappropriated property); and

Whereas, the deputy commissioner has caused the notice to redeem to be served on all persons required by law to be served therewith; and

Whereas, the real estate so purchased has not been redeemed in the manner provided by law and the time for redemption set forth in such notice has expired.

Now, therefore, the grantor for and in consideration of the premises recited herein, and pursuant to the provisions of Article 3, Chapter 11A of the West Virginia Code, doth grant unto ________________, grantee, his or her heirs and assigns forever, the real estate so purchased, situate in the County of ____________, bounded and described as follows: _____________________________ (here insert description of property)

Witness the following signature:

________________________________________

Deputy Commissioner of Delinquent and Nonentered Lands of _______________ County

Except when ordered as provided in §11A-3-60 of this code, the deputy commissioner shall execute and deliver a deed within 120 days after the purchaser’s right to the deed accrued.

For the preparation and execution of the deed and for all the recording required by this section, a fee of $50 and the
recording expenses shall be charged, to be paid by the
grantee upon delivery of the deed. The deed, when duly
acknowledged or proven, shall be recorded by the clerk of
the county commission in the deed book in his or her office,
together with the assignment from the purchaser, if one was
made, the notice to redeem, the return of service of such
notice, the affidavit of publication, if the notice was served
by publication, and any return receipts for notices sent by
certified mail.
AN ACT finding and declaring a claim against the state and its agency to be a moral obligation of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring a certain claim against New River Community and Technical College to be a moral obligation of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by a certain claimant and has considered this claim against the state and New River Community and Technical College, an agency thereof, which has arisen due to over-expenditures of the departmental appropriations by officers of the state spending unit, the claim having been previously considered by the Legislative Claims Commission, which also found that the state has received the benefit of the commodities received and/or services rendered by the claimant, but was denied by the Legislative Claims Commission on the purely
statutory grounds that to allow the claim would be
condoning an act 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 Legislative Claims
Commission as its own, while not condoning such illegal
act, hereby declares it to be the moral obligation of the state
to pay this claim in the amount specified below and directs
the Auditor to issue a warrant 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 payment thereof out of
any fund appropriated and available for the purpose.

(TO BE PAID FROM SPECIAL REVENUE FUND)

G4S Secure Solutions (USA) Inc. ...............$74,296.58

CHAPTER 2

(S. B. 2003 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11B-1-8; and to
amend said code by adding thereto a new section, designated
§17-2A-24, all relating generally to employment procedures
of the Division of Highways and the Tax Division of the
Department of Revenue; authorizing the Tax Commissioner
and the Commissioner of Highways to implement special
employment procedures for personnel positions in their
respective divisions; making legislative findings; defining
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 §11B-1-8; and that said code be amended by adding thereto a new section, designated §17-2A-24, all to read as follows:

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 1. DEPARTMENT OF REVENUE.

§11B-1-8. Special employment procedures for Tax Division personnel.

(a) Legislative findings and intent. —

(1) The Tax Division of the Department of Revenue has approximately one hundred vacancies. The Legislature finds that the division has long had difficulty filling positions which are essential to efficiently and effectively...
administering, collecting and enforcing the tax laws of this state. The Legislature finds that, to address this problem, the hiring and retention processes of the division must be streamlined to effectively and efficiently meet personnel needs while still affording applicants and employees the due process protections of classified service.

(2) The ratification of the Roads to Prosperity Amendment of 2017 to the Constitution of West Virginia will result in substantially increased funding for roads and highways in the state and the opportunity for in-state and out-of-state contractors to bid on road projects. The need to ensure that all businesses are in compliance with the tax laws of this state will exacerbate the division’s staffing shortage.

(3) The purpose of this section is to allow the division to employ qualified applicants in vacant and new personnel positions within the division in a timely manner and to ensure that the division maintains an adequate workforce to effectively and fairly administer, collect and enforce the tax laws of this state.

(b) Definitions. — As used in this section:

(1) “Commissioner” means the Commissioner of the Tax Division of the Department of Revenue or his or her designee; and

(2) “Division” means the Tax Division of the Department of Revenue.

(c) Special employment procedure; requirements. — The commissioner shall implement the special merit-based application and appointment procedure authorized by the provisions of this section for all the employees of the division to ensure and provide for the selection and retention of competent and qualified personnel. The special application and employment procedure established pursuant
to this section shall be effective on and after December 1, 2017, and shall be subject to the following requirements:

(1) The Division of Personnel shall provide competitive registers of eligible applicants when requested by the division to do so within five business days of receipt of the request;

(2) Any position to be filled internally shall be posted for seven calendar days before the division may select an applicant. For positions to be filled with applicants from outside of the division, the public service announcement shall be posted for not less than fourteen calendar days;

(3) Postings shall be active for up to one year;

(4) Notwithstanding any provision of law or rule promulgated under the provisions of this code, the division may employ any person listed on the register for employment as a Tax and Revenue Auditor 1, Tax and Revenue Auditor 2, Tax and Revenue Auditor 3, Revenue Agent 1, Revenue Agent 2, Investigator 2 or Investigator 3 without regard to the person’s position on the applicable register;

(5) The division shall have full authority to evaluate applicants for employment or promotion within the division to positions within the classified service and classified-exempt service. The division shall have sole authority to determine whether applicants for positions with the division meet minimum position requirements;

(6) The division shall have full authority to make classification determinations for positions within the division by using the classification system approved by the State Personnel Board. The division may independently submit to the State Personnel Board recommendations for the approval of new division classifications or the amendment of current division classifications;
(7) The division shall have full authority to exercise its
discretion regarding the application of the Division of
Personnel’s system of compensation for positions within the
classified and classified-exempt service: Provided, That
application of this subdivision shall be uniform. The
division may independently submit to the State Personnel
Board recommendations for the approval of a special pay
scale for the division’s personnel;

(8) Notwithstanding any provision of the code or of any
rule to the contrary, the Division of Personnel shall not be a
mandatory party to any public employee grievance filed
against the division. The Division of Personnel shall not be
a signatory to, and may not override or otherwise challenge,
the division’s decisions regarding settlement terms and
conditions in employee grievances or other legal
proceedings;

(9) The Division of Personnel shall facilitate or perform
any lawful action necessary to initiate or complete the
division’s employment transactions, including, but not
limited to, posting positions on applicable systems,
initiating public service announcements when requested by
the division, and processing necessary forms;

(10) The division shall comply with all applicable
record retention requirements provided by law;

(11) The division is authorized to declare any positions
effectively vacant due to employee separations, which were
not processed prior to the division being placed under the
wvOASIS system, vacant and subject to being filled
pursuant to the provisions of this section;

(12) The division shall have the flexibility to utilize all
vacant position numbers when posting to fill a vacancy and
to post vacant positions utilizing multiple classifications
with corresponding job descriptions when the commissioner
determines it to be necessary and in the best interest of the
division; and
(13) For purposes of this section, a vacancy created when an employee of the division separates or goes on terminal leave may be posted upon receipt of the notice that the employee separated or commenced such leave.

(d) Exemption from regular application and appointment requirements. — When seeking applications or making appointments pursuant to the special procedure authorized by subsection (c) of this section, the division is not required to comply with Division of Personnel procedures for seeking applications and making appointments to classified service positions as provided by the provisions of article six, chapter twenty-nine of this code or in any other provision of this code, including those procedures promulgated in procedural or legislative rules promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code, except that this section does not exempt the division from provisions of this code, prohibiting nepotism, favoritism, discrimination or unethical practices related to appointment, or the public employee grievance system.

(e) The commissioner may promulgate emergency rules and shall propose legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement and comply with the provisions of this section.

(f) The provisions of this section shall apply notwithstanding the provisions of article six, chapter twenty-nine of this code to the contrary.

(g) Classified employees of the division shall continue to be covered by the civil service system and may utilize any applicable public employee grievance process.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. THE WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

(a) Legislative findings and intent. —

(1) The Legislature previously commissioned a performance audit to assess and improve the effectiveness and efficiency of the core operations of the Division of Highways. The Division of Highways has long had difficulty filling positions which are essential to constructing and maintaining the state’s highways and bridges. The Legislature finds that the hiring and retention processes of the division must be streamlined to effectively and efficiently meet personnel needs while still affording applicants and employees the due process protections of classified service.

(2) The Legislature has recently approved increased funding for the division which will exacerbate its staffing shortage of hundreds of positions.

(3) The purpose of this section is to allow the Division of Highways to employ qualified applicants to vacant and new personnel positions in the division in a timely manner and to ensure that the Division of Highways has an adequate workforce sufficient to maintain safe roadways for the citizens of West Virginia.

(b) Definitions. — As used in this section:

(1) “Commissioner” means the Commissioner of the Division of Highways or his or her designee; and

(2) “Division” means the Division of Highways.

(c) Special employment procedure; requirements. — The commissioner shall implement the special merit-based application and appointment procedure authorized by the provisions of this section for all the employees of the division to ensure and provide for the selection and retention of competent and qualified personnel. The special
application and employment procedure established pursuant
to this section shall be effective on and after December 1,
2017, and shall be subject to the following requirements:

(1) The Division of Personnel shall provide competitive
registers of eligible applicants when requested by the
division to do so within five business days of receipt of the
request;

(2) Any position to be filled internally shall be posted
for seven calendar days before the division may select an
applicant. For positions to be filled with an applicant from
outside of the division, the public service announcement
shall be posted for not less than fourteen calendar days;

(3) Postings shall be active for up to one year;

(4) Notwithstanding any provision of law or of any rule
promulgated under the provisions of this code, the division
may employ any person listed on the Transportation Worker
I register for employment as a Transportation Worker I
without regard to the person’s position on said register;

(5) The division shall have full authority to evaluate
applicants for employment or promotion within the division
to positions within the classified service and classified-
exempt service. The division shall have sole authority to
determine whether applicants for positions with the division
meet minimum position requirements;

(6) The division shall have full authority to make
classification determinations for positions within the
division by using the classification system approved by the
State Personnel Board. The division may independently
submit to the State Personnel Board recommendations for
the approval of new division classifications or the
amendment of current division classifications;

(7) The division shall have full authority to exercise its
discretion regarding the application of the Division of
Personnel’s system of compensation for positions in the
division within the classified and classified-exempt service:

Provided, That application of the provisions of this subdivision shall be uniform. The division may independently submit to the State Personnel Board recommendations for the approval of a special pay scale for the division’s personnel;

(8) Notwithstanding any provision of the code or of any rule to the contrary, the Division of Personnel shall not be a mandatory party to any public employee grievance filed against the division. The Division of Personnel shall not be a signatory to, and may not override or otherwise challenge, the division’s decisions regarding settlement terms and conditions in employee grievances or other legal proceedings;

(9) The Division of Personnel shall facilitate or perform any lawful action necessary to initiate or complete the division’s employment transactions, including, but not limited to, posting positions on applicable systems, initiating public service announcements when requested by the division, and processing necessary forms;

(10) The division shall comply with all applicable record retention requirements provided by law;

(11) The division is authorized to declare any positions effectively vacant due to employee separations, which were not processed prior to the division being placed under the wvOASIS system, vacant and subject to being filled pursuant to the provisions of this section;

(12) The division shall have the flexibility to utilize all vacant position numbers when posting to fill a vacancy and to post vacant positions utilizing multiple classifications with corresponding job descriptions when the commissioner determines it to be necessary and in the best interest of the agency; and

(13) For purposes of this section, a vacancy created when an employee of the division separates or goes on
terminal leave may be posted upon receipt of the notice that
the employee has separated or commenced such leave.

(d) Exemption from regular application and
appointment requirements. — When seeking applications or
making appointments pursuant to the special procedure
authorized by subsection (c) of this section, the division is
not required to comply with Division of Personnel
procedures for seeking applications and making
appointments to classified service positions as provided by
the provisions of article six, chapter twenty-nine of this code
or any other provision of this code, including those
procedures promulgated by legislative rules, subject
however to the following exceptions:

(1) This section does not exempt the division from
provisions of this code, prohibiting nepotism, favoritism,
discrimination or unethical practices related to employment
and promotion, or the public employee grievance system; and

(2) The provisions of this section may not be applied to
hiring procedures applicable to any division classified
service position or employee in any manner that disqualifies
the division for eligibility for any federal highway funds or
assistance.

(e) Rules. — The commissioner may promulgate
emergency rules and shall propose legislative rules pursuant
to the provisions of article three, chapter twenty-nine-a of
this code as may be necessary to implement and comply
with the provisions of this section.

(f) The provisions of this section shall apply
notwithstanding any provisions of article six, chapter
twenty-nine of this code to the contrary.

(g) Classified employees of the division shall continue
to be covered by the civil service system and may utilize any
applicable public employee grievance process.
AN ACT to amend and reenact §21-1C-2, §21-1C-4 and §21-1C-6 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Jobs Act; defining terms; requiring Workforce West Virginia to provide a waiver to an employer if unable to refer certain amount of qualified job applicants to the employer within three business days; increasing and adding civil penalties for violations; providing for written notice of violation to employer for violations; creating a special revenue account; and other technical corrections.

Be it enacted by the Legislature of West Virginia:

That §21-1C-2, §21-1C-4 and §21-1C-6 of the West Virginia Code, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

1 As used in this article:

2 (1) The term “commissioner” means the Commissioner of the West Virginia Division of Labor, or his or her authorized representatives.

3 (2) The term “construction project” means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let
to contract in an amount equal to or greater than $500,000.
The term “construction project” does not include temporary
or emergency repairs;

(3) The term “domicile” or “primary residence” means
an individual’s true, fixed, principal, and permanent home,
to which he or she returns or intends to return, even though
currently residing elsewhere. Presentation of a valid,
government-issued identification card shall be conclusive
proof of domicile.

(4) (A) The term “employee” means any person hired or
permitted to perform hourly work for wages by a person,
firm or corporation in the construction industry;

(B) The term “employee” does not include:

(i) Bona fide employees of a public authority or
individuals engaged in making temporary or emergency
repairs;

(ii) Bona fide independent contractors; or

(iii) Salaried supervisory personnel necessary to assure
efficient execution of the employee’s work;

(5) The term “employer” means any person, firm or
corporation employing one or more employees on any
public improvement and includes all contractors and
subcontractors;

(6) The term “local labor market” means every county
in West Virginia, and any county outside of West Virginia
if any portion of that county is within fifty miles of the
border of West Virginia;

(7) The term “public authority” means any officer,
board, commission or agency of the State of West Virginia
and its subdivisions, including counties and municipalities.
Further, the economic grant committee, economic
development authority, infrastructure and jobs development
(8) The term “public improvement” includes, the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

§21-1C-4. Local labor market utilization on public improvement construction projects; waiver certificates.

(a) Employers shall hire at least seventy-five percent of employees for public improvement construction projects domiciled in the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

(b) Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of Workforce West Virginia of the number of qualified employees needed and provide a job description of the positions to be filled.

(c) If, within three business days following the placing of a job order, Workforce West Virginia is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then Workforce West Virginia shall issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

§21-1C-6. Penalties for violation of article, notice of violations; administrative remedies.
(a) If, after inspection or investigation, the commissioner determines that an employer has violated any provision of this article, the commissioner shall provide a written notice of violation to the employer and the public authority, setting forth the number of violations, a description of every violation and the amount of the penalty that will be imposed if the employer continues to violate any provision of this article after receipt of the notice of violation, and shall direct the public authority to withhold final payment to the employer until the employer has paid the penalty or the matter has been otherwise resolved.

(b) Any employer who violates any provision of this article is subject to a civil penalty of $250 per each employee less than the required threshold of seventy-five percent per day of violation after receipt of a notice of violation issued by the commissioner. This civil penalty terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

(c) Any employer that continues to violate any provision of this article more than fourteen calendar days after receipt of a notice of violation is subject to a civil penalty of $500 per each employee less than the required threshold of seventy-five percent per day of violation. This civil penalty terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

(d) All civil penalties paid pursuant to this section shall be paid to the commissioner and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the “West Virginia Jobs Act Fund” and expended for the implementation and enforcement of this article.
CHAPTER 4

(H. B. 201 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exempting military retirement income from personal income tax after specified date.

Be it enacted by the Legislature of West Virginia:

That §11-21-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income, unless already included therein, the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state
unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:
(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first $2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first $2,000 of benefits received under any federal
retirement system to which Title 4 U.S.C. §111 applies:

Provided, however, That the total modification under this paragraph shall not exceed $2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen’s Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed Forces of the United States of America with the product thereof multiplied by the first $30,000 of military retirement income, including retirement income from the regular Armed Forces, reserves and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2000, the first $20,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) For taxable years beginning after December 31, 2017, military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state...
after December 31, 2017, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year.

(D) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is $8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986,
by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That: 

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is $8,000 or more, no deduction shall be allowed under this subdivision; and 

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

(10) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed $2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual;

(11) For the 2006 taxable year only, severance wages received by a taxpayer from an employer as the result of the taxpayer’s permanent termination from employment through a reduction in force and through no fault of the employee, not to exceed $30,000. For purposes of this subdivision:

(i) The term “severance wages” means any monetary compensation paid by the employer in the taxable year as a
result of permanent termination from employment in excess of regular annual wages or regular annual salary;

(ii) The term “reduction in force” means a net reduction in the number of employees employed by the employer in West Virginia, determined based on total West Virginia employment of the employer’s controlled group;

(iii) The term “controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations;

(iv) The term “corporation” means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under section seventeen of this article.
(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. —

(1) Changes in the language of this section enacted in the year 2000 shall apply to taxable years beginning after December 31, 2000.

(2) Changes in the language of this section enacted in the year 2002 shall apply to taxable years beginning after December 31, 2002.

CHAPTER 5

(H. B. 203 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed October 17, 2017; in effect from passage.]
[Approved by the Governor on October 24, 2017.]
allowance of tax credits after December 31, 2022; allowing prior authorized tax credits to be claimed; limiting the maximum amount available for tax credit per project and in the aggregate per West Virginia state fiscal year; requiring the state historic preservation officer to reserve a certain amount of available tax credits for projects where proposed tax credits will not exceed $500,000 per project; authorizing the state historic preservation officer to reallocate unused credits reserved for certain projects; modifying carry-back and carry-forward provisions for tax credits; providing requirements and procedures for the allocation and issuance of tax credit reservations and certificates by the state historic preservation officer; establishing requirements to claim tax credits; requiring the state historic preservation officer to prescribe and publish a form and instructions for applications for credits; providing for an application fee payable to the state historic preservation officer; establishing and providing for the administration of and expenditures from a special revenue account; and providing time limits for certain actions of the state historic preservation officer.

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

That §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-23a and §11-24-23e of said code be amended and reenacted, all to read as follows:

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-8a. Credit for qualified rehabilitated buildings investment.**

A credit against the tax imposed by the provisions of this article is allowed as follows:

(a) *Certified historic structures.* – For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided,* That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification
application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure, subject to the limitations and other provisions of section twenty-three-a, article twenty-four of this chapter: Provided, however, That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: Provided further, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as “certified historic structures,” and further defined as a “qualified rehabilitated building,” as defined under §47(c)(1), Title 26 of the United States Code, as amended.
(b) The tax credit allowed by this section is eliminated after December 31, 2022: Provided, That any tax credits authorized by the state historic preservation officer and eligible to be claimed prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of law governing those tax credits that were in effect prior to January 1, 2023.

§11-21-8e. Carryback, carryforward.

(a) Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section eight-a of this article which may not be taken in the taxable year to which the credit applies qualifies for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: Provided, That the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: Provided, however, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section eight-a of this article, may not be carried back to any prior taxable year: Provided further, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section eight-a of this article may be carried over to each of the next ten tax years following the first tax year for which the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.

(b) Effective for taxable years beginning on and after January 1, 2001, credits granted to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company or multiple owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to an agreement among the shareholders, partners, members or owners documenting an alternative distribution method. The Tax Commissioner shall promulgate procedural rules in accordance with article
three, chapter twenty-nine-a of this code that provide the method of reporting the alternative method of distribution authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

(a) A credit against the tax imposed by the provisions of this article shall be allowed as follows:

Certified historic structures. – For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: Provided, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure: Provided, however, That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: Provided further, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the
payment of any tax administered by the Tax Division, is not
delinquent in the payment of any local or municipal tax, nor
is the taxpayer delinquent in the payment of property taxes
on the property containing the certified historic tax
structure, and such other administrative requirements as the
Tax Commissioner may specify. This credit is available for
both residential and nonresidential buildings located in this
state that are reviewed by the West Virginia Division of
Culture and History and designated by the National Park
Service, United States Department of the Interior as
“certified historic building”, and further defined as a
“qualified rehabilitated building”, as defined under
§47(c)(1), Title 26, of the United States Code, as amended.

(b) **Allocations and maximum amounts of tax credits per
project and per fiscal year** -

(1) No more than $10 million of the tax credits
authorized by this section and section eight-a, article
twenty-one of this chapter may be allocated, reserved or
issued by the state historic preservation officer to any single
certified rehabilitation.

(2) No more than $30 million of the tax credits
authorized by this section and section eight-a, article
twenty-one of this chapter cumulatively may be issued by
the state historic preservation officer for use in any given
West Virginia state fiscal year, and any amount remaining
up to $30 million may not be carried over to a subsequent
West Virginia state fiscal year.

(3) At the beginning of each fiscal year, no less than $5
million of the tax credits authorized by this section and
section eight-a, article twenty-one of this chapter shall be
set aside for reservation and the issuance of tax credits for
certified rehabilitation projects with proposed tax credits of
$500,000. The balance of any amount set aside for these
projects that has not been reserved pursuant to the
procedures in subsection (c) of this section by the end of the
fiscal year shall be allocated by the state historic
preservation officer for the projects in any amount of other pending applicants otherwise eligible for the issuance of tax credits under this section and section eight-a, article twenty-one of this chapter in the order that the applications for those projects were received.

(c) Procedure for issuance of tax credits reservations and certificates by the state historic preservation officer –

(1) Any claim for the tax credits authorized pursuant to this section and section eight-a, article twenty-one of this chapter shall be accompanied by a tax credit certificate issued by the state historic preservation officer.

(2) The tax credits will be awarded on a first come, first served basis. At the time the historic preservation certification application, Part 2 – Description of Rehabilitation, is received by the state historic preservation office, the project will be placed on a reservation list, which will reserve the tax credit amount listed on the application. The historic preservation certification application, Part 2 – Description of Rehabilitation, will be reviewed by the state historic preservation office for completion and submitted to the National Park Service for full review. At the time the historic preservation certification application, Part 2 – Description of Rehabilitation, is submitted to the National Park Service, the state historic preservation officer shall send a request for the fee prescribed in subsection (e) of this section to the property owner. Upon approval of the historic preservation certification application, Part 2 – Description of Rehabilitation, from the National Park Service, including approval with conditions, that the project will meet the Secretary of the Interior’s standards for rehabilitation, the owner of the building will receive guarantee of the tax credits from the state historic preservation office.

(3) The state historic preservation officer shall issue tax credit certificates for certified rehabilitation projects that the National Park Service has determined have met the Secretary of the Interior standards for rehabilitation based
on the issuance of an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work.

(4) Once the state historic preservation officer has allocated and reserved the maximum tax credits authorized for any given West Virginia state fiscal year, the state historic preservation officer then shall allocate and reserve tax credits against the maximum tax credits authorized for use in the succeeding West Virginia state fiscal year.

(5) If an applicant for tax credits that receives a reservation for tax credits for any given West Virginia state fiscal year fails to submit an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work in the instance of a certified rehabilitation within thirty-six (36) months of the date of the approved historic preservation certification application, Part 2 – Description of Rehabilitation, therefor or in the instance of a phased project as determined by the National Park Service within sixty (60) months of the date of the advisory determination by the National Park Service therefor that such phase has been completed in accordance with the Secretary of the Interior standards for rehabilitation then the state historic preservation officer may reallocate part or all of the tax credits reserved therefor to other applicants in the order their applications were received.

(d) The state historic preservation officer shall prescribe and publish a form and instructions for an application for reservation and issuance of the tax credits authorized by this section and section eight-a, article twenty-one of this chapter.

(e) Application fee - Each application for tax credits authorized pursuant to this section and section eight-a, article twenty-one of this chapter shall require a fee payable to the state historic preservation officer equal to the lesser of (1) 0.5% of the amount of the tax credits requested for in such application and (2) $10,000. The state historic
preservation officer shall review and act on all such applications within thirty days of receipt.

Fees collected under this subsection shall be deposited into a special revenue account which is hereby created. The fund shall be administered by the state historic preservation officer and expended for the purposes of administering the provisions of this section and section eight-a, article twenty-one of this chapter.

(f) The tax credit allowed by this section is eliminated after December 31, 2022: Provided, That any tax credits authorized by the state historic preservation officer and eligible to be claimed prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of law governing those tax credits that were in effect prior to January 1, 2023.

§11-24-23e. Carryback, carryforward.

Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section twenty-three-a of this article which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: Provided, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: Provided, however, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section twenty-three-a of this article, may not be carried back to any prior taxable year: Provided further, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section twenty-three-a of this article may be carried over to each of the next ten tax years following the first tax year for which the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5cc; and to amend and reenact §11-10-11 of said code, all relating generally to allowing certain tax information to be shared with designated employees of Commissioner of Highways pursuant to written agreement; specifying information that may be disclosed; defining “good standing”; permitting agreement to be amended from time to time; clarifying scope of confidentiality and protection of information in hands of Commissioner of Highways; and clarifying that failure to remit personal income taxes required to be withheld by a contractor is grounds for withholding payment in final settlement of a contract.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5cc; and that §11-10-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5cc. Disclosure of certain tax information to Commissioner of Highways.
(a) Notwithstanding any provision of this article to the contrary, the Tax Commissioner shall enter into a written agreement with the Commissioner of Highways of this state to disclose to designated employees of the Division of Highways:

1. Whether a bidder for a contract with the Division of Highways has a current business registration certificate under article twelve of this chapter;

2. Whether a contractor with the Division of Highways, or any subcontractor of that contractor, has had its current business registration certificate revoked or suspended under article twelve of this chapter;

3. Whether a cease and desist order has been issued under article twelve of this chapter to a contractor working on a project for the Division of Highways or a subcontractor of that contractor working on a road construction or repair project;

4. Whether a contractor bidding on a contract for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

5. Whether a contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

6. Whether a subcontractor of any contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one
of this chapter based on information in Tax Division 
databases;

(7) Whether a bidder for a highway construction 
contract is in good standing with the Tax Commissioner;

(8) Whether a contractor or subcontractor working on a 
project for the Division of Highways is in good standing 
with the Tax Commissioner and, if not in good standing, an 
explanation of why the contractor or subcontractor is not in 
good standing; and

(9) Whether a bidder, contractor or subcontractor 
currently has pending before the Office of Tax Appeals a 
contest concerning any assessment for additional tax or 
denial of a claim for refund or credit.

(b) For purposes of this section, the term “good 
standing” means that the bidder, contractor or subcontractor 
has: (1) Filed all required tax returns due for taxes 
administered under this article; (2) paid all taxes shown to 
be due in the filed returns, including any interest and 
additions to tax; and (3) paid all withholding taxes for 
employees of the bidder, contractor or subcontractor 
required to be paid under this code.

(c) An agreement executed under subsection (a) of this 
section may be amended, from time to time, by the Tax 
Commissioner and the Commissioner of Highways.

(d) Information in the hands of the Commissioner of 
Highways or his or her designees pursuant to an agreement 
under this section shall enjoy the same level of 
confidentiality and protection as the information would 
enjoy in the hands of the Tax Commissioner.


(a) General. — The Tax Commissioner shall collect the 
taxes, additions to tax, penalties and interest imposed by this 
article or any of the other articles of this chapter to which
this article is applicable. In addition to all other remedies available for the collection of debts due this state, the Tax Commissioner may proceed by foreclosure of the lien provided in section twelve, or by levy and distraint under section thirteen.

(b) Prerequisite to final settlement of contracts with nonresident contractor; user personally liable. —

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter shall withhold payment, in the final settlement of the contract, of a sufficient amount, not exceeding six percent of the contract price, as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from the Tax Commissioner to the effect that the above-referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided in subdivision (1) of this subsection, that person is personally liable for the payment of all taxes attributable to the contract, not to exceed six percent of the contract price. The taxes attributable shall be recoverable by the Tax Commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) Prerequisite for issuance of certificate of dissolution or withdrawal of corporation. — The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the Tax Commissioner to the effect that every tax administered under this article imposed against any corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.
(d) Prerequisite to final settlement of contract with this state or political subdivision; penalty. — All state, county, district and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall withhold payment, in the final settlement of any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter against the contractor, or required to be withheld by the contractor, have been paid or provided for. If the transaction embodied in the contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then the payment shall also be withheld until receipt of a release from the county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid. Any official violating this section is subject to a civil penalty of $1,000, recoverable as a debt in a civil action brought by the Tax Commissioner.

(e) Limited effect of Tax Commissioner's certificates. — The certificates of the Tax Commissioner provided in subsections (b), (c) and (d) of this section shall not bar subsequent investigations, assessments, refunds and credits with respect to the taxpayer.

(f) Payment when person sells out or quits business; liability of successor; lien. —

(1) If any person subject to any tax administered under this article sells out his, her or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall become due and payable immediately and that person shall, within thirty days after selling out his, her or its business or stock of goods or ceasing to do business, make a final return or returns and pay any tax or taxes which are due. The unpaid amount of any tax is a lien upon the property of that person.
(2) The successor in business of any person who sells out his, her or its business or stock of goods, or ceases doing business, is personally liable for the payments of tax, additions to tax, penalties and interest unpaid after expiration of the thirty-day period allowed for payment:

Provided, That if the business is purchased in an arms-length transaction, and if the purchaser withholds so much of the consideration for the purchase as will satisfy any tax, additions to tax, penalties and interest which may be due until the seller produces a receipt from the Tax Commissioner evidencing the payment thereof, the purchaser is not personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all of the taxes. The amount of tax, additions to tax, penalties and interest for which the successor is liable is a lien on the property of the successor, which shall be enforced by the Tax Commissioner as provided in this article.

(g) Priority in distribution of estate or property in receivership; personal liability of fiduciary. — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any trustee, receiver, administrator, executor or person charged with the administration of an estate who violates the provisions of this section is personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

(h) Injunction. — If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the Tax Commissioner may institute a proceeding to secure an
injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of this article or any other articles. No bond is required of the Tax Commissioner in any action instituted under this subsection.

(i) Costs. — In any proceeding under this section, upon judgment or decree for the Tax Commissioner, he or she shall be awarded his or her costs.

(j) Refunds; credits; right to offset. —

(1) Whenever a taxpayer has a refund or credit due it for an overpayment of any tax administered under this article, the Tax Commissioner may reduce the amount of the refund or credit by the amount of any tax administered under this article, whether it be the same tax or any other tax, which is owed by the same taxpayer and collectible as provided in subsection (a) of this section.

(2) The Tax Commissioner may enter into agreements with the Internal Revenue Service that provide for offsetting state tax refunds against federal tax liabilities; offsetting federal tax refunds against state tax liabilities; and establishing the amount of the offset fee per transaction which both agencies may charge each other: Provided, That offsets under subdivision (1) of this subsection shall occur prior to offset under this subdivision. At the times moneys are received as a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e) of the Internal Revenue Code, the taxpayer is given credit against state tax liability for the amount of the offset less a deduction for the offset fee imposed by the Internal Revenue Service: Provided however, That the amount of the offset fee imposed by the Internal Revenue Service shall be added to the taxes, interest and penalties owed by the taxpayer to this state: Provided further, That the amount of the offset fee imposed by the Tax Commissioner shall be deducted from the moneys retained from the taxpayer's state tax refund and then deposited in the special revolving fund
which is hereby created and established in the state Treasury
and designated as the Tax Offset Fee Administration Fund:
And provided further, That the fees deposited in the Tax
Offset Fee Administration Fund may be expended by the
Tax Commissioner for the general administration of the
taxes administered under the authority of this article.

(k) Spouse relieved of liability in certain cases. —

(1) In general. — Under regulations prescribed by the
Tax Commissioner, if:

(A) A joint personal income tax return has been made
for a taxable year;

(B) On the return there is a substantial understatement
of tax attributable to grossly erroneous items of one spouse;

(C) The other spouse establishes that in signing the
return he or she did not know, and had no reason to know,
that there was a substantial understatement; and

(D) Taking into account all the facts and circumstances,
it is inequitable to hold the other spouse liable for the
deficiency in tax for the taxable year attributable to the
substantial understatement, then the other spouse is relieved
of any liability for tax, including interest, additions to tax,
and other amounts for the taxable year to the extent the
liability is attributable to the substantial understatement.

(2) Grossly erroneous items. — For purposes of this
subsection, the term “grossly erroneous items” means, with
respect to any spouse:

(A) Any item of gross income attributable to a spouse
which is omitted from gross income; and

(B) Any claim of a deduction, credit or basis by a spouse
in an amount for which there is no basis in fact or law.
(3) Substantial understatement. — For purposes of this subsection, the term “substantial understatement” means any understatement, as defined in regulations prescribed by the Tax Commissioner which exceed $500.

(4) Understatement must exceed specified percentage of spouse's income.

(A) Adjusted gross income of $20,000 or less. — If the spouse's adjusted gross income for the readjustment year is $20,000 or less, this subsection applies only if the liability described in subdivision (1) of this subsection is greater than ten percent of the adjusted gross income.

(B) Adjusted gross income of more than $20,000. — If the spouse's adjusted gross income for the readjustment year is more than $20,000, paragraph (A) of this subdivision is applied by substituting “twenty-five percent” for “ten percent”.

(C) Readjustment year. — For purposes of this paragraph, the term “readjustment year” means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) Computation of spouse's adjusted gross income. — If the spouse is married to another spouse at the close of the readjustment year, the spouse's adjusted gross income shall include the income of the new spouse whether or not they file a joint return.

(E) Exception for omissions from gross income. — This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

(5) Adjusted gross income. — For purposes of this subsection, the term “adjusted gross income” means the West Virginia adjusted gross income of the taxpayer, determined under article twenty-one of this chapter.
AN ACT to amend and reenact §17-3-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §17-26A-1, §17-26A-2, §17-26A-3, §17-26A-4, §17-26A-5, §17-26A-6, §17-26A-7, §17-26A-8, §17-26A-9, §17-26A-10, §17-26A-11, §17-26A-12, §17-26A-13 and §17-26A-14, all relating generally to state road bonds; requiring proceeds from the sale of state road bonds issued pursuant to Roads to Prosperity Amendment of 2017 to be kept in separate and distinct account in the State Road Fund; authorizing cost of issuance to be paid from State Road Fund; providing definitions; authorizing sale of bonds; providing schedule for sale of bonds; providing amount of bonds to be sold; providing conditions on the sale and issuance of bonds; creating the Roads to Prosperity Bond Debt Service Fund; authorizing investment of the fund; providing bond covenants; requiring certification of annual debt service amount; prohibiting conflicts of interest; creating a criminal misdemeanor offense and providing penalties for the proceeds from the sale of bonds to inure to the benefit of or be distributed to officers or employees of the state except to pay reasonable compensation for services rendered; declaring
state road bonds lawful investments; allowing for the refund of bonds; allowing for continuity of debt service in termination or dissolution; authorizing the Treasurer to select financial advisor; authorizing the Governor to select bond counsel and underwriter; allowing for payment of necessary expenses for issuance from funds; dedicating tax and fee collections for debt service; and setting a schedule for certain deposits into the Roads to Prosperity Bond Debt Service Fund.

Be it enacted by the Legislature of West Virginia:


ARTICLE 3. STATE ROAD FUND.

§17-3-1. What constitutes fund; payments into fund; use of money in fund.

There shall be a State Road Fund, which shall consist of the proceeds of all state license taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees imposed upon all owners, chauffeurs, operators and dealers in automobiles or other motor driven vehicles; all sums of money which may be donated to such fund; all proceeds derived from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the Better Roads Amendment to the Constitution of this state, adopted in November, 1964, except that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the State Road Fund; all proceeds from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the Safe Roads Amendment of 1996 to the Constitution of this state, adopted in November, 1996, except that the proceeds from the sale of these bonds shall
be kept in a separate and distinct account in the State Road Fund; all proceeds from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the Roads to Prosperity Amendment of 2017 to the Constitution of this state, adopted in October, 2017, except that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the State Road Fund; all moneys and funds appropriated to it by the Legislature; and all moneys allotted or appropriated by the federal government to this state for road construction and maintenance pursuant to any act of the Congress of the United States; the proceeds of all taxes imposed upon and collected from any person, firm or corporation and of all taxes or charges imposed upon and collected from any county, district or municipality for the benefit of the fund; the proceeds of all judgments, decrees or awards recovered and collected from any person, firm or corporation for damages done to, or sustained by, any of the state roads or parts thereof; all moneys recovered or received by reason of the violation of any contract respecting the building, construction or maintenance of any state road; all penalties and forfeitures imposed, recovered or received by reason thereof; and any and all other moneys and funds appropriated to, imposed and collected for the benefit of such fund, or collected by virtue of any statute and payable to such fund: Provided, That notwithstanding any provisions of this code to the contrary, 50 cents of every license fee paid pursuant to the provisions of subdivision (2), subsection (a), section eight, article two, chapter seventeen-b of this code shall be paid to the special fund established pursuant to the provisions of subsection (a), section twelve, article two, chapter three of this code.

When any money is collected from any of the sources aforesaid, it shall be paid into the State Treasury by the officer whose duty it is to collect and account for the same, and credited to the State Road Fund, and shall be used only for the purposes named in this chapter, which are: (a) To pay the principal and interest due on all state bonds issued
for the benefit of said fund, and any costs related to the issuance thereof, and set aside and appropriated for that purpose; (b) to pay the expenses of the administration of the Division of Highways; and (c) to pay the cost of maintenance, reconstruction and improvement of all state roads.

ARTICLE 26A. ROADS TO PROSPERITY STATE ROAD BONDS.


For purposes of this article:

(1) “Commissioner” means the West Virginia Commissioner of Highways continued pursuant to section one, article two-a of this chapter;

(2) “Amendment” means the amendment to the Constitution of this state entitled Roads to Prosperity Amendment of 2017 as approved by referendum in October, 2017;

(3) “State road bond” means any bond or bonds issued by the state pursuant to section two of this article;

(4) “Division” means the West Virginia Division of Highways established under section one, article two-a of this chapter, or any successor to all or any substantial part of its powers and duties; and

(5) “Secretary” means the Secretary of the West Virginia Department of Transportation.

§17-26A-2. State road general obligation bonds; amount; when may issue.

(a) Bonds of the State of West Virginia, under authority of the Roads to Prosperity Amendment of 2017 of the principal amount not to exceed in the aggregate $1.6 billion are authorized to be issued and sold for matching available
federal funds for highway and bridge construction in this  
state and for general highway and secondary roads and  
bridge construction or improvements in each of the fifty-  
five counties in this state, as provided for by the  
Constitution and the provisions of this article. During the  
fiscal year beginning July 1, 2017, the principal amount of  
$800 million in bonds may be sold. During the fiscal year  
beginning July 1, 2018, the principal amount of $400  
million in bonds may be sold. During the fiscal year  
beginning July 1, 2019, the principal amount of $200  
million in bonds may be sold. During the fiscal year  
beginning July 1, 2020, the principal amount of $200  
million in bonds may be sold. Any amount not sold in a  
fiscal year may be carried forward and issued in any  
subsequent year before July 1, 2021.

(b) These bonds may be issued by the Governor upon  
resolution passed by the Legislature authorizing the same.  
The bonds shall bear the date and mature at the time, bear  
interest at the rates, be in amounts, be in denominations,  
be in the registered form, carry registration privileges, be  
due and payable at the times and place and in amounts,  
and be subject to terms of redemption as the resolution  
may allow.

(c) Both the principal and interest of the bonds shall be  
payable in the lawful money of the United States of  
America, and the bonds and the interest thereon shall be  
exempt from taxation by the State of West Virginia, or by  
any county, district or municipality thereof, which fact shall  
appear on the face of the bonds as part of the contract with  
the holder of the bond.

(d) The bonds shall be executed on behalf of the State  
of West Virginia, by the manual or facsimile signature of  
the Governor, under the Great Seal of the State or a  
facsimile of the Great Seal, and countersigned by the  
manual or facsimile signature of the Secretary of State.
§17-26A-3. Creation of debt service fund to pay debt service on state road general obligation bonds.

There is hereby created a special account in the State Treasury, which shall be designated and known as the Roads to Prosperity Bond Debt Service Fund, into which shall be deposited any and all amounts appropriated by the Legislature from the State Road Fund or funds from any source whatsoever which is made liable by law for the purpose of paying the interest on the bonds or paying off and retiring bonds issued pursuant to this article.

§17-26A-4. Roads to Prosperity Bond Debt Service Fund; sources used to pay bonds, interest and cost of issuance; investment of remainder.

(a) All funds deposited to the credit of the Roads to Prosperity Bond Debt Service Fund shall be kept by the State Treasurer in a separate account, and all money belonging to the fund shall be deposited in the Treasury to the credit of the fund.

(b) The fund shall be applied by the State Treasurer for payments on the principal and interest on bonds sold pursuant to this article as it becomes due and payable and any costs related to the issuance thereof. The remainder of the fund, if any, shall be invested by the West Virginia Board of Treasury Investments in the manner authorized under article six-c, chapter twelve of this code.


The State of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That the bonds are a direct and general obligation of the State of West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of the bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay, as it may accrue, the interest on the bonds and the principal thereof; and (4)
that the tax shall be levied in any year only to the extent that
the moneys transferred to the Roads to Prosperity Bond
Debt Service Fund as provided in sections three and four of
this article which are irrevocably set aside and appropriated
for and applied to the payment of the interest on and
principal of any bond becoming due and payable in such
year are insufficient therefor.

§17-26A-6. Sale by Governor; certification of annual debt
service amount.

The Governor shall sell the bonds herein authorized at a
time or times as provided by resolutions enacted by the
Legislature. The Governor, in his or her discretion, may, by
executive message, request that a resolution be proposed for
the issuance of bonds pursuant to this article. The Governor
shall determine the manner by which bonds will be sold at
an aggregate price equal to, above or below par value. On
or before June 1 in the fiscal year in which the first bonds
are issued pursuant to this article and June 1 of each fiscal
year, the commissioner shall certify to the Treasurer and
Secretary of the Department of Revenue the principal and
interest requirement for the following fiscal year on any
bonds issued pursuant to this article.

§17-26A-7. Conflicts of interest.

No part of the proceeds from the sale of bonds under
this article may inure to the benefit of or be distributable to
the officers or employees of the state except to pay
reasonable compensation for services rendered to the state.
Any person violating the provisions of this section is guilty
of a misdemeanor and, upon conviction thereof, shall be
fined not more than $1,000, or confined in jail not more than
one year, or both fined and confined.

All state road bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, and insurance companies, including domestic for life and domestic not for life insurance companies.


Any state road general obligation bonds which are outstanding may at any time be refunded by the issuance of refunding bonds in an amount deemed necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to accomplish the purpose of the amendment and to pay any premiums necessary to be paid in connection therewith. Any refunding may be effected whether the state road general obligation bonds to be refunded shall have then matured or shall thereafter mature. Any refunding bonds issued pursuant to this article shall be payable from the Roads to Prosperity Bond Debt Service Fund.

§17-26A-10. Termination or dissolution.

Upon the termination or dissolution of the West Virginia Division of Highways, all rights and properties of the West Virginia Division of Highways with respect to the Roads to Prosperity Bond Debt Service Fund shall pass to and be vested in the state, subject to the rights of bondholders, lienholders and other creditors.


The Treasurer, in his or her discretion, may select a competent person or firm to serve as financial advisor for the issuance and sale of general obligation bonds issued pursuant to this article.

The Governor shall select a competent person or firm to serve as bond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of general obligation bonds issued pursuant to this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the Governor, the secretary or the commissioner regarding any bond issuance pursuant to this article and all other matters relating to the bond issue. The Governor may also, in his or her discretion, select a person or firm to serve as underwriter for any issuance pursuant to this article.

§17-26A-13. Approval of and payment of all necessary expenses.

All necessary expenses, including legal expenses, incurred in the issuance of any general obligation bonds pursuant to this article shall be paid out of the Roads to Prosperity Bond Debt Service Fund or the State Road Fund if so appropriated by the Legislature. The amount of any expenses incurred shall be certified to the Treasurer by the Commissioner of Highways.


(a) There shall be dedicated an annual amount from the collections of the taxes and fees imposed pursuant to chapters eleven, seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code, that are required to be deposited to the credit of the State Road Fund sufficient to pay the principal and interest of any state road bonds issued pursuant to this article.

(b) Beginning in July in the fiscal year in which the first interest payment on the bonds issued pursuant to this article is due, and monthly thereafter for the first ten
months of each fiscal year, there shall be deposited into the Roads to Prosperity Bond Debt Service Fund an amount equal to one tenth of the projected annual principal and interest requirements, as certified by the commissioner, on all bonds issued pursuant to this article, of the tax collected pursuant to chapter eleven of this code: Provided, That each tenth payment shall be reduced by any interest earnings accrued to the Roads to Prosperity Bond Debt Service Fund: Provided, however, That if bonds issued after the annual certification have a first interest or principal payment coming due in the then current or next fiscal year, the monthly deposits shall be made in such a manner to provide for the payment of the interest and/or principal coming due.
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