ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 2019

Volume I
Chapters 1 - 135
FOREWORD

These volumes contain the Acts of the First Regular Session of the 84th Legislature, 2019. In addition, this forward includes a summary of bills and resolutions introduced during the Second Extraordinary Session of the 83rd Legislature, 2018.

First Regular Session, 2019

The First Regular Session of the 84th Legislature convened on January 9, 2019. The Constitutional sixty-day limit on the duration of the session was March 9, 2019. The Governor issued a proclamation on March 6, 2019, extending the session for a period not to exceed one day for the purpose of considering the Budget Bill. The House of Delegates adjourned sine die at 11:55 p.m. on March 9, 2019 and the session ended when the Senate adjourned sine die at 12:03 a.m. on March 10, 2019.

Bills totaling 1,823 were introduced in the two houses during the session (1,142 House and 681 Senate). The Legislature passed 294 bills, 139 House and 155 Senate.

The Governor vetoed 30 bills (Com. Sub. for H. B. 2079, Removing certain limitations on medical cannabis grower, processer and dispensary licenses; Com. Sub. for H. B. 2363, Relating to the Upper Kanawha Valley Resiliency and Revitalization Program; H. B. 2412, Relating to criminal acts concerning government procurement of commodities and services; Com. Sub. for H. B. 2486, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation; Com. Sub. for H. B. 2503, Relating to court actions; H. B. 2530, Creating a voluntary certification for recovery residences; Com. Sub. for H. B. 2531, Permitting trained nurses to provide mental health services in a medication-assisted treatment program; Com. Sub. for H. B. 2579, Relating to the collection of tax and the priority of distribution of an estate or property in receivership; Com. Sub. for H. B. 2661, Relating to natural gas utilities; Com. Sub. for H. B. 2673, Creating the Oil and Gas Abandoned Well Plugging Fund; Com. Sub. for H. B. 2674, Creating a student loan repayment program for a mental

One bill became law without the Governor’s signature (**H. B. 2934**, West Virginia Lottery Interactive Wagering Act), leaving
a net total of 266 bills, 119 House and 147 Senate, which became law.

There were 174 Concurrent Resolutions introduced during the session, 109 House and 65 Senate, of which 48 House and 23 Senate were adopted. Twenty-nine House Joint Resolutions and 11 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 22 House Resolutions and the Senate introduced 80 Senate Resolutions, of which 11 House and 76 Senate were adopted.

Second Extraordinary Session, 2018

The Proclamation calling the Legislature into Extraordinary Session on June 25, 2018, contained 2 items for consideration.

The Legislature introduced 2 bills during the Extraordinary Session (1 House and 1 Senate). The Legislature did not pass either of the 2 bills.

There was 1 Senate Concurrent Resolution introduced and adopted, S. C. R. 201, Authorizing adjournments of Senate and House of Delegates. One Senate Joint Resolution was introduced which was not adopted. The House introduced 5 House Resolutions, and the Senate introduced 6 Senate Resolutions, of which 3 House and 5 Senate were adopted.

The House adjourned sine die on August 29, 2018, and the Senate adjourned sine die, ending the Second Extraordinary Session, on December 10, 2018.

STEPHEN J. HARRISON

Clerk of the House and  
Keeper of the Rolls.
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Regular Session, 2019

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#### REGULAR SESSION, 2019

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- *Speaker:* Roger Hanshaw - Wallback
- *Clerk:* Stephen J. Harrison - Cross Lanes
- *Sergeant-at-Arms:* Anne Lieberman - Charleston
- *Doorkeeper:* Robert Stewart - Cross Lanes

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<td>Administrator</td>
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<td>Graves, Dianna (R)</td>
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<td>Mount Hope</td>
<td>Director of Human Resources</td>
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[XXIX]
MEMBERS OF THE HOUSE OF DELEGATES - Continued

<table>
<thead>
<tr>
<th>Name</th>
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<th>City</th>
<th>Occupation</th>
<th>Terms In Office</th>
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<tr>
<td>Zukoff, Larry D. (R)</td>
<td>59th</td>
<td>Falling Waters</td>
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<td>Business Sales/Author</td>
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<tr>
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<tr>
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<td>Educator</td>
<td>69th - 71st; 74th</td>
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<td>83rd</td>
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<td>73rd - 74th (House); 75th - 76th</td>
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<td>Kingswood</td>
<td>Assessor</td>
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<td>Wayne</td>
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<td>4th</td>
<td>Moundsville</td>
<td>Business Owner</td>
<td>84th</td>
</tr>
</tbody>
</table>

1Anne Lieberman resigned as Sergeant-at-Arms on March 1, 2019.
### Members of the Senate

**Regular Session, 2019**

**Officers**
- President: Mitch Carmichael - Ripley
- Clerk: Bruce Lee Cassis, Jr. - Charleston
- Sergeant-at-Arms: Joseph Allen Freedman - Charleston
- Doorkeeper: Jeffrey L. Branham - Cross Lanes

<table>
<thead>
<tr>
<th>Name</th>
<th>District</th>
<th>City</th>
<th>Occupation</th>
<th>Term</th>
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<tbody>
<tr>
<td>Azinger, Michael T.</td>
<td>3rd</td>
<td>Vienna</td>
<td>Manager</td>
<td>82nd (House); 83rd - 84th</td>
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<tr>
<td>Baldwin, Stephen (D)</td>
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<td>76th - 80th; 81st - 84th</td>
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<td>Summersville</td>
<td>Civil Engineer</td>
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<td>5th</td>
<td>Huntington</td>
<td>Lawyer</td>
<td>82nd - 84th</td>
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</tbody>
</table>

1 Appointed January 17, 2019, to fill the vacancy created by the resignation of Richard Ojeda, who resigned January 14, 2019.
AGRICULTURE AND NATURAL RESOURCES

Cooper (Chair, Agriculture), Harshbarger (Chair, Natural Resources), Cadle (Vice Chair, Agriculture), Atkinson (Vice Chair, Natural Resources), Hartman (Minority Chair, Agriculture), Tomblin (Minority Chair, Natural Resources), R. Thompson (Minority Vice Chair, Agriculture), Hansen (Minority Vice Chair, Natural Resources), Anderson, Dean, Hott, J. Jeffries, D. Kelly, Linville, Paynter, Phillips, Sypolt, Westfall, Wilson, Campbell, Lavender-Bowe, Rodighiero, Sponaugle, Swartzmiller and Zukoff.

BANKING AND INSURANCE

Nelson (Chair, Banking), Westfall (Chair, Insurance), Criss (Vice Chair, Banking), Azinger (Vice Chair, Insurance), Estep-Burton (Minority Chair, Banking), Williams (Minority Chair, Insurance), Lovejoy (Minority Vice Chair, Banking), N. Brown (Minority Vice Chair, Insurance), Capito, Espinosa, Graves, Hott, Householder, D. Jeffries, P. Martin, McGeehan, Porterfield, Shott, Waxman, Barrett, Bates, Hartman, Robinson, Rowe and Sponaugle.

EDUCATION

Hamrick (Chair), Dean (Vice Chair), Hornbuckle (Minority Chair), Doyle (Minority Vice Chair), Atkinson, Bibby, Butler, Cooper, Hanna, Higginbotham, Jennings, J. Kelly, P. Martin, Rohrbach, Toney, Waxman, Westfall, Campbell, Estep-Burton, Evans, Lavender-Bowe, Rodighiero, C. Thompson, R. Thompson and Zukoff.

ENERGY

Anderson (Chair), J. Kelly (Vice Chair), Evans (Minority Chair), Pethtel (Minority Vice Chair), Azinger, Cadle, Harshbarger, Higginbotham, Hott, J.

ENROLLED BILLS

Capito (Chair), Atkinson (Vice Chair), Westfall, Byrd and Pushkin.

FINANCE

Householder (Chair), Criss (Vice Chair), Bates (Minority Chair), Barrett (Minority Vice Chair), Anderson, Butler, Cowles, Ellington, Espinosa, Graves, Hardy, Hill, Linville, Maynard, Rowan, Storch, Westfall, Boggs, Hartman, Longstreth, Pethtel, Rowe, Skaff, Sponaugle and Williams.

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Maynard (Chair), Jennings (Vice Chair), Angelucci (Minority Chair), Campbell (Minority Vice Chair), J. Jeffries, Pack, Paynter, Sypolt, Worrell, Lovejoy and Miller.

GOVERNMENT ORGANIZATION

Howell (Chair), Pack (Vice Chair), Pyles (Minority Chair), Diserio (Minority Vice Chair), Azinger, Bibby, Cadle, Hott, D. Jeffries, J. Jeffries, R. Martin, Nelson, Paynter, Phillips, Porterfield, Sypolt, Worrell, Angelucci, Caputo, Hansen, Hicks, Staggers, Swartzmiller, Tomblin and Walker.

HEALTH AND HUMAN RESOURCES

Ellington (Chair), Hill (Vice Chair), Pushkin (Minority Chair), Staggers (Minority Vice Chair), Atkinson, Butler, Criss, Dean, Hollen, D. Jeffries, Pack, Queen, Rohrbach, Rowan, Summers, Wilson, Worrell, Angelucci, Bates, Estep-Burton, Fleischauer, Lavender-Bowe, Robinson, C. Thompson and Walker.
HOUSE OF DELEGATES COMMITTEES

INDUSTRY AND LABOR

Fast (Chair), P. Martin (Vice Chair), Miller (Minority Chair), Hicks (Minority Vice Chair), Dean, Foster, Hanna, Harshbarger, Hill, Householder, D. Jeffries, Jennings, Kump, Malcolm, Porterfield, Shott, Worrell, N. Brown, S. Brown, Caputo, Diserio, Fluharty, Pushkin, Skaff and C. Thompson.

INTERSTATE COOPERATION

Storch (Chair), Waxman (Vice Chair), Bibby, Ellington, Estep-Burton, Fleischauer and Lovejoy.

JUDICIARY

Shott (Chair), Capito (Vice Chair), Fleischauer (Minority Chair), Fluharty (Minority Vice Chair), Fast, Foster, Harshbarger, Hollen, D. Kelly, Kessinger, Kump, Malcolm, Mandt, McGeehan, Queen, Steele, Wilson, N. Brown, S. Brown, Byrd, Canestraro, Lovejoy, Miller, Pushkin and Robinson.

PENSIONS AND RETIREMENT

Hollen (Chair), Graves (Vice Chair), Pethtel (Minority Chair), Evans (Minority Vice Chair), Malcolm and Pack.

POLITICAL SUBDIVISIONS

Storch (Chair), Cowles (Vice Chair), Robinson (Minority Chair), S. Brown (Minority Vice Chair), Anderson, Azinger, Capito, Dean, Fast, Foster, Graves, Hamrick, Jennings, J. Kelly, R. Martin, Phillips, Wilson, Barrett, Canestraro, Doyle, Longstreth, Miller, Pyles, Walker and Williams.

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Rohrbach (Chair), Hollen (Vice Chair), Robinson (Minority Chair), Walker (Minority Vice Chair), Ellington, Hanna, D. Kelly, Kessinger, Mandt, Hornbuckle and Pushkin.
HOUSE OF DELEGATES COMMITTEES

RULE-MAKING REVIEW

Foster (Chair), Bulter (Vice Chair), P. Martin, Steele, Fleischauer and Rowe.

RULES

Hanshaw (Chair), Summers (Vice Chair), Anderson, Cowles, Ellington, Espinosa, Foster, Hamrick, Householder, Howell, Kessinger, Shott, Barrett, Bates, Caputo, Fleischauer, Miley, Miller, Pethtel and Sponaugle.

SENIOR, CHILDREN, AND FAMILY ISSUES

Rowan (Chair), Rohrbach (Vice Chair), Boggs (Minority Chair), Rodighiero (Minority Vice Chair), Graves, Hanna, J. Kelly, Kessinger, Linville, Malcolm, Mandt, P. Martin, R. Martin, Maynard, Queen, Sypolt, Toney, Canestraro, Estep-Burton, Fluharty, Longstreth, Lovejoy, Pethtel, Pyles and Williams.

SMALL BUSINESS, ENTREPRENEURSHIP & ECONOMIC DEVELOPMENT

Higginbotham (Chair), Queen (Vice Chair), Skaff (Minority Chair), Lavender-Bowe (Minority Vice Chair), Atkinson, Cowles, Ellington, Hardy, Hill, Mandt, R. Martin, Nelson, Phillips, Steele, Toney, Waxman, Westfall, Byrd, Doyle, Hartman, Hicks, Hornbuckle, Miley, R.Thompson and Tomblin.

TECHNOLOGY AND INFRASTRUCTURE

Butler (Chair), Linville (Vice Chair), Rowe (Minority Chair), C. Thompson (Minority Vice Chair), Cadle, Capito, Criss, Espinosa, Fast, Hamrick, Hardy, Howell, Kump, Maynard, Paynter, Rohrbach, Storch, Angelucci, Boggs, Diserio, Evans, Hansen, Staggers, Walker and Zukoff.
HOUSE OF DELEGATES COMMITTEES

VETERANS’ AFFAIRS & HOMELAND SECURITY

McGeehan (Chair, Veterans’ Affairs), Jennings (Chair, Homeland Security), Butler (Vice Chair, Veterans’ Affairs), Paynter (Vice Chair, Homeland Security), Longstreth (Minority Chair, Veterans’ Affairs), Canestraro (Minority Chair, Homeland Security), Byrd (Minority Vice Chair, Veterans’ Affairs), Swartzmiller (Minority Vice Chair, Homeland Security), Bibby, Cooper, Higginbotham, Hollen, D. Kelly, J. Kelly, Pack, Rowan, Steele, Sypolt, Worrell, Angelucci, Campbell, Fleischauer, Pethtel, Pushkin and Staggers.
SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2019
(As of January 18, 2019)

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

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

BANKING AND INSURANCE

Azinger (Chair), Clements (Vice Chair), Blair, Hamilton, Rucker, Swope, Tarr, Weld, Facemire, Jeffries, Palumbo, Prezioso, and Romano.

CONFIRMATIONS

Boley (Chair), Takubo (Vice Chair), Azinger, Blair, Boso, Weld, Palumbo, Plymale, and Prezioso.

ECONOMIC DEVELOPMENT

Maynard (Chair), Swope (Vice Chair), Azinger, Cline, Hamilton, Mann, Roberts, Tarr, Baldwin, Ihlenfeld, Jeffries, Romano, Stollings, and Woelfel.

EDUCATION

Rucker (Chair), Blair (Vice Chair), Azinger, Boley, Cline, Maynard, Roberts, Trump, Baldwin, Beach, Plymale, Romano, Stollings, and Unger.

ENERGY, INDUSTRY AND MINING

Smith (Chair), Sypolt (Vice Chair), Boley, Clements, Cline, Hamilton, Mann, Swope, Facemire, Ihlenfeld, Jeffries, Lindsay, and Woelfel.

[XXXVII]
SENATE COMMITTEES

ENROLLED BILLS

Maynard (Chair), Roberts (Vice Chair), Tarr, Lindsay, and Woelfel.

FINANCE

Blair (Chair), Mann (Vice Chair), Boley, Hamilton, Maroney, Roberts, Swope, Sypolt, Takubo, Tarr, Facemire, Ihlenfeld, Palumbo, Plymale, Prezioso, Stollings, and Unger.

GOVERNMENT ORGANIZATION

Boso (Chair), Swope (Vice Chair), Clements, Mann, Maroney, Smith, Sypolt, Tarr, Facemire, Ihlenfeld, Jeffries, Lindsay, Palumbo, and Woelfel.

HEALTH AND HUMAN RESOURCES

Maroney (Chair), Tarr (Vice Chair), Azinger, Maynard, Roberts, Rucker, Takubo, Weld, Palumbo, Plymale, Prezioso, Stollings, and Unger.

INTERSTATE COOPERATION

Cline (Chair), Maynard (Vice Chair), Boso, Hamilton, Hardesty, Ihlenfeld, and Unger.

JUDICIARY

Trump (Chair), Weld (Vice Chair), Azinger, Boso, Clements, Cline, Maynard, Rucker, Smith, Takubo, Baldwin, Beach, Hardesty, Jeffries, Lindsay, Romano, and Woelfel.

MILITARY

Weld (Chair), Maroney (Vice Chair), Cline, Hamilton, Smith, Sypolt, Facemire, Hardesty, and Lindsay.

[XXXVIII]
SENATE COMMITTEES

NATURAL RESOURCES

Maynard (Chair), Mann (Vice Chair), Cline, Hamilton, Roberts, Rucker, Smith, Sypolt, Beach, Facemire, Hardesty, Prezioso, and Stollings.

PENSIONS

Azinger (Chair), Hamilton (Vice Chair), Boso, Trump, Ihlenfeld, Plymale, and Romano.

RULES

Carmichael (Chair), Blair, Boley, Maroney, Sypolt, Takubo, Trump, Palumbo, Plymale, Prezioso, and Stollings.

TRANSPORTATION AND INFRASTRUCTURE

Clements (Chair), Swope (Vice Chair), Boley, Boso, Mann, Roberts, Beach, Jeffries, and Plymale.

WORKFORCE

Swope (Chair), Weld (Vice Chair), Boley, Maroney, Rucker, Smith, Tarr, Baldwin, Beach, Jeffries, and Stollings.
LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2019

CHAPTER 1

(Com. Sub. for S. B. 510 - By Senators Takubo, Maroney and Weld)

[Passed February 28, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §55-7B-6 of the Code of West Virginia, 1931, as amended, relating to medical professional liability; providing for requirements for notice of claim; setting out requirements for an expert who signs a certificate of merit; and providing for information to be included with the certificate of merit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

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

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

(b) At least 30 days prior to the filing of a medical professional liability action against a health care provider, the claimant shall serve by certified mail, return receipt requested, a notice of claim on each health care provider the
claimant will join in litigation. For the purposes of this section, where the medical professional liability claim against a health care facility is premised upon the act or failure to act of agents, servants, employees, or officers of the health care facility, such agents, servants, employees, or officers shall be identified by area of professional practice or role in the health care at issue. The notice of claim shall include a statement of the theory or theories of liability upon which a cause of action may be based, and a list of all health care providers and health care facilities to whom notices of claim are being sent, together with a screening certificate of merit. The screening certificate of merit shall be executed under oath by a health care provider who:

(1) Is qualified as an expert under the West Virginia rules of evidence;

(2) Meets the requirements of §55-7B-7(a)(5) and §55-7B-7(a)(6) of this code; and

(3) Devoted, at the time of medical injury, 60 percent of his or her professional time annually to the active clinical practice in his or her medical field or specialty, or to teaching in his or her medical field or specialty in an accredited university.

If the health care provider executing the screening certificate of merit meets the qualifications of subdivisions (1), (2), and (3) of this subsection, there shall be a presumption that the health care provider is qualified as an expert for the purpose of executing a screening certificate of merit. The screening certificate of merit shall state with particularity, and include: (A) The basis for the expert’s familiarity with the applicable standard of care at issue; (B) the expert’s qualifications; (C) the expert’s opinion as to how the applicable standard of care was breached; (D) the expert’s opinion as to how the breach of the applicable standard of care resulted in injury or death; and (E) a list of all medical records and other information reviewed by the expert executing the screening certificate of merit. A
separate screening certificate of merit must be provided for each health care provider against whom a claim is asserted. The health care provider signing the screening certificate of merit shall have no financial interest in the underlying claim, but may participate as an expert witness in any judicial proceeding. Nothing in this subsection limits the application of Rule 15 of the Rules of Civil Procedure. No challenge to the notice of claim may be raised prior to receipt of the notice of claim and the executed screening certificate of merit.

(c) Notwithstanding any provision of this code, if a claimant or his or her counsel believes that no screening certificate of merit is necessary because the cause of action is based upon a well-established legal theory of liability which does not require expert testimony supporting a breach of the applicable standard of care, the claimant or his or her counsel shall file a statement specifically setting forth the basis of the alleged liability of the health care provider in lieu of a screening certificate of merit. The statement shall be accompanied by the list of medical records and other information otherwise required to be provided pursuant to subsection (b) of this section.

(d) Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 60 days of the date the health care provider receives the notice of claim. The screening certificate of merit shall be accompanied by a list of the medical records otherwise required to be provided pursuant to subsection (b) of this section.
(e) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 180 days of the date the health care provider receives the notice of claim.

(f) Any health care provider who receives a notice of claim pursuant to the provisions of this section may respond, in writing, to the claimant or his or her counsel within 30 days of receipt of the claim or within 30 days of receipt of the screening certificate of merit if the claimant is proceeding pursuant to the provisions of subsection (d) or (e) of this section. The response may state that the health care provider has a bona fide defense and the name of the health care provider’s counsel, if any.

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

(h) If the health care provider demands mediation pursuant to the provisions of subsection (g) of this section, the mediation shall be concluded within 45 days of the date of the written demand. The mediation shall otherwise be conducted pursuant to Rule 25 of the Trial Court Rules, unless portions of the rule are clearly not applicable to a mediation conducted prior to the filing of a complaint or unless the Supreme Court of Appeals promulgates rules governing mediation prior to the filing of a complaint. If
mediation is conducted, the claimant may depose the health care provider before mediation or take the testimony of the health care provider during the mediation.

(i)(1) Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, and except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

(2) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled 180 days from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

(3) If a claimant has sent a notice of claim relating to any injury or death to more than one health care provider, any one of whom has demanded mediation, then the statute of limitations shall be tolled with respect to, and only with
respect to, those health care providers to whom the claimant
sent a notice of claim to 30 days from the receipt of the
claimant of written notice from the mediator that the
mediation has not resulted in a settlement of the alleged
claim and that mediation is concluded.

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

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CHAPTER 2

(Com. Sub. for H. B. 2618 - By Delegates Rowan, C.
Martin, Rohrbach, Sypolt, Graves, Lovejoy,
Longstreth, Boggs, Mandt, Maynard and J. Kelly)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §55-7J-1 of the Code of West
Virginia, 1931, as amended, relating to amending the definition
of the terms “financial exploitation” or “financially exploit” to
include the use of undue influence resulting in diminishment of
assets of an elderly person, protected person or incapacitated
adult; authorizing cause of action in magistrate and circuit court
for financial exploitation due to intentional misappropriation or
misuse of funds or undue influence against an elderly person,
protected person or incapacitated adult; temporary relief may
be granted without notice to the respondent; providing for
issuance of protective orders; providing protective orders
issued by a magistrate court are temporary; requiring magistrate
Be it enacted by the Legislature of West Virginia:

ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON, OR INCAPACITATED ADULT.

§55-7J-1. Action for financial exploitation of an elderly person, protected person or incapacitated adult; definitions.

(a) Any elderly person, protected person, or incapacitated adult against whom an act of financial exploitation has been committed may bring an action under this article against any person who has committed an act of financial exploitation against him or her.

(b) For the purposes of this article:

(1) “Incapacitated adult” has the same meaning as prescribed under §61-2-29 of this code;

(2) “Elderly person” means a person who is 65 years or older;

(3) “Financial exploitation” or “financially exploit” means the intentional misappropriation or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly person, protected person, or incapacitated adult, but may not apply to a transaction or disposition of funds or assets where the defendant made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) “Protected person” means any person who is defined as a “protected person” in §44A-1-4 of this code and who is...
subject to the protections of §44A-1-1 et seq. or §44C-1-1 et seq. of this code.

(c) Any person who believes that an elderly person, protected person, or incapacitated adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds or undue influence may bring an action for a protective order pursuant to this section in the magistrate court or circuit court in the county in which the elderly person, protected person, or incapacitated adult resides: Provided, That an action for relief brought in the magistrate court of the county of residence of the elderly person, protected person, or incapacitated adult believed to be the victim of financial exploitation to stay further diminution of the persons assets shall be temporary in nature.

(d) An action under this section is commenced by the filing of a verified petition. Temporary relief may be granted without notice to the person alleged to be engaging in financial exploitation and without that person being present.

(e) If a magistrate court grants the petition and issues a temporary protective order, the magistrate court shall immediately transfer the matter to the circuit court of the county in which the petition was filed. Upon receipt of the notice of transfer from the magistrate court, the circuit court shall set the matter for a review hearing within 20 days. After a hearing, the circuit court may issue a permanent protective order containing any relief the circuit court determines necessary to protect the alleged victim if the court finds by a preponderance of the evidence that:

(1) The respondent has committed an act against the victim that constitutes financial exploitation; and

(2) There is reasonable cause to believe continued financial exploitation will occur unless relief is granted; or

(3) The respondent consents to entry of the permanent protective order.
AN ACT to amend and reenact §19-35-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-35-6, all relating to the sale of homemade food items; defining terms; authorizing production and sale of homemade food items under certain circumstances; establishing conditions for exemption from licensure, permitting, inspection, packaging, and labeling laws; providing required notices to consumer; defining manner of providing notices; exempting certain products from the scope of this provision; permitting local health departments and the Department of Agriculture to investigate and cease production or sale of food items reported to have caused a foodborne illness; authorizing Department of Agriculture to provide assistance, consultation, or inspection at request of producer; providing for preemption of county, local, and municipal ordinances; providing that preemption does not apply to space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration; and providing for exemptions.

Be it enacted by the Legislature of West Virginia:
ARTICLE 35. FARMERS MARKETS AND COTTAGE FOODS.


For purposes of this article:

“Consignment farmers market” means a farmers market in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors’ products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location.

“Delivered” means transferred to the consumer, either immediately upon sale or at a time thereafter.

“Department” means the Department of Agriculture.

“Farm and food product” means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. Farm and food products are to be properly labeled.

“Farmers market” means:

(1) A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

(2) An on-farm market or farm stand run by an individual producer that sells farm and food products;

(3) An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of those products until they are sold; or

(4) A consignment farmers market as defined herein.
“Farmers market vendor” or “vendor” means a person or entity that sells farm and food products at a farmers market.

“Homemade food item” means a nonpotentially hazardous food item, including a nonalcoholic beverage, which is produced and/or packaged at the private residence of the producer.

“Nonpotentially hazardous” means food that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

“Produce” means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

“Producer” means the person who produces a homemade food item.

“Retailer” means and includes every person engaging in the business of selling, leasing, or renting tangible personal property.

“Seller” means the person who sells a homemade food item to a consumer. The seller of the homemade food item may be the producer of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery store.

§19-35-6. Direct sale of homemade food items.

(a) The production and sale of homemade food items, when done in conformity with this section, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.

(b) The following conditions apply to the sale and delivery of homemade food items:
(1) The homemade food item must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and

(2) The homemade food items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

(c) The following information must be provided to the consumer, in the format required by subsection (d) of this section:

(1) The name, home address, and telephone number of the producer of the homemade food item;

(2) The common or usual name of the homemade food item;

(3) The ingredients of the homemade food item in descending order of predominance; and

(4) The following statement: “This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens.”

(d) The information required by subsection (c) of this section must be provided:

(1) On a label affixed to the package, if the homemade food item is packaged;

(2) On a label affixed to the container, if the homemade food item is offered for sale from a bulk container;

(3) On a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container;

(4) On the webpage on which the homemade food item is offered for sale, if the homemade food item is offered for sale on the Internet; or
(5) On a receipt or other document provided to the customer with the homemade food item.

(e) The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(c), or §381.10(d) and comply with other applicable federal regulations.

(f) This section shall not be construed to:

(1) Impede the authority of a local health department or the department to investigate or cease the production or sale of food items reported to have caused a foodborne illness;

(2) Preclude the department from providing assistance, consultation, or inspection at the request of the producer of a homemade food item;

(3) Preclude the production or sale of food items otherwise allowed by law;

(4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;

(5) Exempt producers or sellers of homemade food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;

(6) Exempt producers or sellers of homemade food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or

(7) Exempt producers or sellers of homemade food items from any applicable law of another state.
(g) This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items: Provided, That such preemption shall not include space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration.

CHAPTER 4

(Com. Sub. for S. B. 323 - By Senators Baldwin, Beach, Maynard, Romano, Rucker, Smith, Sypolt, Plymale, Cline, Roberts, Hamilton and Stollings)

[Passed February 13, 2019; in effect from passage.]
[Approved by the Governor on February 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-4e; and to amend and reenact §19-12A-6a of said code, all relating to establishing and funding a special revenue fund to be known as the Department of Agriculture Capital Improvements Fund; creating the fund; providing for administration by Department of Agriculture; identifying sources of moneys for said fund; identifying expenditures that may be made from said fund; providing for funds to remain at end of each fiscal year; eliminating certain deposits in the General Revenue Fund; permitting deposits into certain funds; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.
§19-1-4e. Department of Agriculture Capital Improvements Fund.

There is hereby created in the State Treasury a special revenue account to be known as the Department of Agriculture Capital Improvements Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys transferred into the fund pursuant to §19-12A-6a of this code, any moneys that may be appropriated and designated for the fund by the Legislature, and all interest or other return earned from investment of the fund.

Expenditures from the fund shall be for the purpose of funding construction and capital improvements to facilities owned or occupied by the Department of Agriculture and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 et seq. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

ARTICLE 12A. LAND DIVISION.

§19-12A-6a. Special revenue account.

All funds collected by the department pursuant to this article, whether from the sale of food, the disposition of assets other than land, the lease of land or minerals or any other source, shall be paid into a special revenue account to be used for the purposes of this article: Provided, That when the remaining balance at the end of any fiscal year of the funds so collected and deposited in the special revenue account exceeds $1 million, the department may transfer the excess funds to the Department of Agriculture Capital Improvements Fund established in §19-1-4e of this code.
CHAPTER 5

(S. B. 324 - By Senators Sypolt, Beach, Rucker, Smith, Weld, Boso, Cline, Clements, Tarr and Hamilton)

[Passed February 7, 2019; in effect from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend and reenact §19-1-3 of the Code of West Virginia, 1931, as amended, relating to employees of the Commissioner of Agriculture.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3. Employees; itemized statement of expenditures; monthly statement and payment of moneys received by commissioner.

The commissioner shall organize his or her department and may employ a general counsel and other such legal, business, science, and technical professionals, para-professionals, and experts, and employees as may be necessary to perform the duties of the office. He or she shall fix their compensation and may require them to give bond for the faithful performance of their duties.

The commissioner shall certify to the State Auditor, from time to time, an itemized account of all expenditures made by him or her for employee hire and other purposes, whereupon the Auditor shall draw his or her warrant on the State Treasurer for the payment thereof out of the funds appropriated by the Legislature for that purpose, but in no case to exceed such appropriation.
The commissioner shall, within 10 days after the expiration of each month, submit to the Auditor and Treasurer an itemized statement of all moneys received by him or her during that month, and at the same time pay such money into the State Treasury.

CHAPTER 6

(Com. Sub. for S. B. 344 - By Senators Carmichael (Mr. President), Prezioso and Cline)

[Passed March 5, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to repeal §19-12A-3, §19-12A-7, and §19-12A-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-12A-1, §19-12A-2, §19-12A-5, and §19-12A-6 of said code, all relating to the operation of state-owned farms; clarifying that state-owned farms are managed by the Commissioner of the Department of Agriculture; removing reference to Farm Management Commission; defining terms; removing language regarding organization and duties of Farm Management Commission; expanding permissive uses and purposes of institutional farms; replacing outdated language referencing to the Department of Health and Human Resources and Division of Corrections and Rehabilitation; authorizing Commissioner of Agriculture to request inmate labor on institutional farms; providing that state institutions may purchase items from vendors that state-owned farms cannot provide; removing references to Farm Management Director and replacing with commissioner; and removing outdated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12A. LAND DIVISION.
§19-12A-1. Legislative findings and declarations.

The Legislature hereby finds and declares that in order to ensure economic and efficient land use, increase and improve agricultural production, and provide food for residents of state operated institutions, state-owned farms should operate under the control of the Commissioner of Agriculture. The Legislature also finds and declares that the operation of all institutional farms under one management system with a single integrated farm plan is the most efficient method of providing the food needs of residents of state-operated institutions and will promote the health and welfare of all citizens of this state.


For the purpose of this article:

“Agricultural products” means livestock and livestock products, poultry and poultry products, fruits and fruit products, vegetables and vegetable products, grains and hays and the products derived therefrom, tobacco, syrups, honey, and other products derived from the business of farming; including such other products as may be manufactured, derived, or prepared from agricultural products, raw or processed, which are used as food for man or animals.

“Commission” means the Farm Management Commission as established by this article.

“Commissioner” means the Commissioner of Agriculture, or his or her designee.

“Department” means the Department of Agriculture.

“Farm equipment” means any equipment used for agricultural production.

“Farm facility” means any processing plant, milking parlor, farm equipment storage building, barn, silo, grain
storage building, swinery, or any other building owned by an institution used in its farming operations.

“Institution” means any facility operated by the Department of Health and Human Resources or the Division of Corrections and Rehabilitation.

“Institutional farm” means any land which was formerly operated as a farm, is now being operated as a farm, or could be converted to agricultural production.

§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.

[Repealed.]


(a) The commissioner shall manage all institutional farms, equipment, and other property in order to most efficiently produce food products for state institutions, support the department and its activities, advance the agricultural interests of the state, as identified by the commissioner, and otherwise implement the intent of the Legislature as set forth by this article. From the total amount of food, milk, and other commodities produced on institutional farms, the commissioner shall sell, at prevailing wholesale prices, and each of the institutions under the control of the Department of Health and Human Resources and Division of Corrections and Rehabilitation shall purchase, these products based on the dietary needs of each institution: Provided, That if the commissioner cannot sell sufficient food products to each institution to meet the demand created, each institution may purchase such food products from vendors who can supply those food products at the greatest savings to the taxpayers of the state.

(b) If requested by the Commissioner of the Division of Corrections and Rehabilitation, the commissioner may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise using inmates as labor on
those lands. The Commissioner of the Division of Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the inmates and shall, in consultation with the Commissioner of Agriculture, assign the work to be performed by inmates. The Commissioner of Agriculture may also request inmate labor to perform work on the institutional farms, and if requested, the Commissioner of the Division of Corrections and Rehabilitation shall provide inmate labor, if available.

(c) The commissioner is hereby authorized and empowered to:

1. Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. Any lease for an annual consideration of $1,000 or more shall be by sealed bid auction and the commission shall give notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for such publication is the county in which the property to be leased is located;

2. Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-11-4 and §5A-11-5 of this code;

3. Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral
resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Department of Environmental Protection will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) of this subsection; and

(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(d) Notwithstanding the provisions of subsection (c) of this section, no timberland may be leased, sold, exchanged, or otherwise disposed of unless there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange, or other disposition is accomplished by the sealed bid auction procedure provided above in subdivision (1) or (2), subsection (c) of this section as applicable.

(e) The commissioner may promulgate, pursuant to §29-1-1 et seq. of this code, rules and regulations relating to the powers and duties of the commissioner as enumerated in this section.

§19-12A-6. Commissioner’s powers and duties.

The commissioner or his or her designee is responsible for conducting the operations of the farms and shall:

(1) Prepare an annual report of the farming operations, including a listing of all receipts and expenditures and shall present it to the Legislature at the end of each fiscal year.

(2) Prepare the annual budget request for the operation of the institutional farms.

(3) Receive and approve all requisitions for farm supplies and equipment.

(4) Supervise the operation of all canneries and determine what foods are to be canned.
(5) Recruit and approve assistant farm managers to supervise each institutional farm.

(6) Transfer farm supplies, farm equipment, farm facilities, food stuffs, and produce from one institutional farm to another to promote efficiency and improve farm management.

(7) Rent or lease additional land for farm use.

By September 30 each year, each institution under the control of the Department of Health and Human Resources and the Division of Corrections and Rehabilitation shall present to the commissioner a purchase order for its food requirements during the next fiscal year as determined by the institution. If, during the year, an institution finds that it needs other or additional food, milk, or commodities not included in its purchase order for the year, the institutional superintendent may forward a supplemental request to the commissioner, which order may be filled depending on availability. If institutional farms produce more food, milk, and other commodities than can be sold to the institutions, the commissioner may sell the surplus to other state agencies willing to purchase. If any surplus remains after sales to other state agencies, the commissioner may sell the surplus on the open market or turn over any surplus food products to appropriate public, nonprofit agencies.

§19-12A-7. Farm division lines to be established; appeal to commission; remedy.

[Repealed.]

§19-12A-8. Effect of management plan on employees.

[Repealed.]
AN ACT to amend and reenact §19-19-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §19-19-7 and §19-19-8, all relating to the right to farm; providing for amended definitions of “agriculture” and “agricultural land”; defining the term “agricultural operation”; limiting persons who may file a nuisance action against an agricultural operation; providing for protections to agricultural operations from nuisance actions under certain circumstances; prohibiting state and local agencies from bringing actions against agricultural operations for activities that are in material compliance with applicable state and federal laws, regulations, and permits; exempting agricultural operations from municipal requirements under certain circumstances; providing that protections from nuisance actions do not apply under certain circumstances; permitting that the protected status of an agricultural operation is assignable, alienable, and inheritable; making a person who brings a nuisance action against a protected agricultural operation liable for the costs and expenses of the agricultural operation in defending the action; limiting total damages to the diminished value of the subject property; providing for the exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation; providing
that the combined recovery of any claimant or claimant’s successor in interest against an agricultural operation shall not exceed the fair market value of his or her property; and prohibiting punitive damages being awarded to a claimant for nuisance actions originating from an agricultural operation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.


For the purposes of this article:

(a) “Agriculture” shall mean the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and marketing of agricultural products conducted by the proprietor of the agricultural operation, or any other legal plant or animal production and all farm practices.

(b) “Agricultural land” shall mean any amount of land and the improvements thereupon, used or usable in the production of food, fiber or woodland products of an annual value of $1,000 or more, by the conduct of the business of agriculture, as defined in subsection (a) of this section.

(c) “Agricultural operation” shall mean any facility utilized for agriculture.


(a) The provisions of this section are in addition to the limitations on actions brought against an agricultural operation in §19-19-4 of this code, and shall also apply to any nuisance action brought against an agricultural operation in any court of this state.
(b) A person may not file a nuisance action to recover damages in which an agricultural operation is alleged to be a public or private nuisance unless:

1. He or she is the majority legal land owner;
2. He or she owns property adversely affected by agricultural operations within one half mile of the agricultural operation; and
3. The agricultural operation has materially violated a federal, state, or local law applicable to agriculture.

(c) No agricultural operation within this state which has been in operation for a period of more than one year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural operation is located. In any nuisance action, public or private, against an agricultural operation or its principals or employees proof that the agricultural operation has existed for one year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits.

(d) No state or local agency may bring a criminal or civil action against an agricultural operation for an activity that is in material compliance with all applicable state and federal laws, regulations, and permits.

(e) No agricultural operation shall be or become a private or public nuisance if the operators are conducting the agricultural operation in a manner consistent with commonly accepted agricultural practice. If the operation is in material compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with commonly accepted agricultural practice.

(f) No agricultural operation shall be considered a nuisance, private or public, if the agricultural operation
makes a reasonable expansion, so long as the operation is in material compliance with all applicable state and federal laws, regulations, and permits.

(1) For the purpose of this section, a reasonable expansion includes, but is not limited to:

(A) Transfer of the agricultural operation;

(B) Purchase of additional land for the agricultural operation;

(C) Introducing technology to an existing agricultural operation including, but not limited to, new activities, practices, equipment, and procedures consistent with technological development within the agricultural industry;

(D) Applying a Natural Resources Conservation Service program or other United States Department of Agriculture program to an existing or future agricultural operation; or

(E) Any other change that is related and applied to an existing agricultural operation, so long as the change does not affect the agricultural operation’s compliance with applicable state and federal laws, regulations, and permits.

(2) The reasonable expansion exemption provided by this subsection cannot apply to an expansion that:

(A) Creates a substantially adverse effect upon the environment; or

(B) Creates a hazard to public health and safety.

(g) A requirement of a municipality does not apply to an agricultural operation situated outside of the municipality’s corporate boundaries on the effective date of this chapter. If an agricultural operation is subsequently annexed or otherwise brought within the corporate boundaries of a municipality, the requirements of the municipality do not apply to the agricultural operation.
(h) An agricultural operation is not, nor shall it become, a private or public nuisance after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began, and the conditions or circumstances complained of as constituting the basis for the nuisance action exist substantially unchanged since the established date of operation. The established date of operation is the date on which an agricultural operation commenced.

(i) The provisions of this section shall not apply in any of the following circumstances:

1. Whenever a nuisance results from the negligent operation of any such agricultural operation; or

2. To affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of agricultural operation.

(j) The protected status of an agricultural operation, once acquired, is assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, may not be waived by the temporary cessation of operations or by diminishing the size of the operation.


(a) A person who brings a nuisance action for damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of §19-19-7(h) of this code is liable to the agricultural operation for all costs and expenses incurred in defense of the action, including, but not limited to, attorneys’ fees, court costs, travel, and other related incidental expenses incurred in the defense.
(b) In no event shall the total amount of damages in any successful nuisance action exceed the diminished value of the subject property.

(c) The exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation shall be as follows:

(1) If the nuisance is determined to be a permanent nuisance, compensatory damages shall be limited to the reduction in the fair market value of the claimant’s property caused by the nuisance, not to exceed the fair market value of the claimant’s property; and

(2) If the nuisance is determined to be a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the claimant’s property caused by the nuisance.

(d) If any claimant or claimant’s successor in interest brings a subsequent private nuisance action against any agricultural operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(e) A claimant shall not be awarded punitive damages for nuisance actions originating from an agricultural operation.
CHAPTER 8
(Com. Sub. for S. B. 404 - By Senators Sypolt and Boso)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §19-1B-4, §19-1B-6, §19-1B-7, §19-1B-10, and §19-1B-12a of the Code of West Virginia, 1931, as amended, all relating generally to sediment control during commercial timber harvesting operations; increasing the threshold amount before a logger must follow certain licensing requirements regarding sediment control; requiring the logger to notify the Director of the Division of Forestry at least three days before timbering begins; requiring certain training requirements prior to recertification of certified loggers; providing for appeals; increasing criminal penalties; and editing certain limitations on issuing citations and powers of arrest.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

(a) A person may not conduct timbering operations, purchase timber, or buy logs for resale until he or she has obtained a license and met the requirements of this article.

(b) Exemptions. — A person who severs or removes, or hires or contracts with another to sever or remove, standing trees from his or her own land is exempted from the timbering operations licensure requirement of this section
during any calendar year in which all trees severed or removed by or on behalf of the owner of record has a total gross sales value received by the exemption holder of less than $52,000. A person hired or contracted to sever or remove standing trees from the land of another is exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by the hired or contracted person has a total gross sales value received by the exemption holder of less than $52,000.

(c) An applicant for a timbering operation license shall submit an application and the fee of $150 for each biennial renewal of the license. The application shall contain the following information:

(1) Name, address, and telephone number of the applicant and, if the applicant is a business entity other than a sole proprietor, the names and addresses of the principals, officers, and resident agent of the business entity;

(2) The applicant’s West Virginia business registration number or a copy of the current West Virginia business registration certificate. The Division of Forestry shall submit this information and a list of all applicants to the Tax Commissioner each month of the calendar year to ensure compliance with payment of severance, income withholding, and all other applicable state taxes; and

(3) Any other information as required by the director.

(d) The director shall propose rules for legislative approval pursuant to the provisions of §29A-3-1 et seq. of this code regarding the acquisition, suspension, and revocation of a license under this article. The rules are the proper subject of emergency legislative rules that may be promulgated in accordance with the provision of §29A-3-15 of this code.
(e) The director shall prescribe a form providing the contents and manner of posting notice at the timbering operation. The notice shall include, at a minimum, the operator’s name and license number.

§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

(a) In addition to any other requirement of this article, no person may conduct timbering operations and no person may sever trees for sale unless the person notifies the director of the specific location on which the timbering operations or harvesting of timber are to be conducted. The notification shall be made in a manner designated by the director.

(1) All persons who conduct timbering operations or who harvest timber for sale, including those persons who are specifically exempted from the licensure requirements of §19-1B-4 of this code, shall provide to the director of the division notification of harvesting of timber, which shall include:

(A) The name and address of the harvester of timber;

(B) The name and addresses of the owner or owners of the property upon which the timber is located;

(C) The business tax number or social security number of the harvester of timber; and

(D) An acknowledgment that the harvester of timber will conduct the harvest according to best management practices.

(2) In addition to the requirements of subdivision (1) of this subsection, persons who are subject to the licensure requirements of §19-1B-4 of this code shall provide to the director of the division notification of timbering operations, which shall include, at a minimum, the following:
(A) The specific topographic location where the timbering operations are to be conducted;

(B) The approximate dates that the timbering operation will begin and end;

(C) The approximate acreage over which timbering operations are contemplated;

(D) The names and addresses of the owner or owners of the timber to be harvested and, if different, the names and addresses of the owner or owners of the property upon which the timber is located;

(E) A sketch map of the proposed logging operation, including haul roads, landings, and stream crossings;

(F) A description of the sediment control practices to be used by the logger during the timber harvesting operation;

(G) An acknowledgment that the operator will conduct the operations in compliance with the provisions of this article and any applicable rules promulgated pursuant to this article;

(H) A certification satisfactory to the director that all permits required under state law have been obtained or applied for and that all pertinent requirements for obtaining any permit applied for, but not yet obtained, have been complied with; and

(I) The name or names of the person or persons who will be supervising the timbering operations at the site of the operations and his or her logger certification numbers.

(b) The notification shall be made at least three days before the start of the operation.

(c) Further notice shall be given if the operation is to be, for any reason, closed more than seven days before the
§19-1B-7. Certification of persons supervising timbering operations; timbering operations to be supervised; promulgation of rules.

(a) Any individual supervising any licensed timbering operation, or any individual supervising any timbering operation that is not exempted from the licensing requirements set forth in §19-1B-4 of this code, must be certified pursuant to this section.

(b) The director is responsible for the development of standards and criteria for education, training, and examination that must be successfully completed for persons to be certified to supervise any timbering operation. The certified logger shall attend a total of six hours of training every two years prior to recertification. The program for certified loggers shall, at a minimum, provide for education and training in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices to prevent soil erosion on timbering operations. The goals of this program will be to assure that timbering operations are conducted in accordance with applicable state and federal safety regulations in a manner that is environmentally sound and safe.

(c) The director shall provide programs using the resources of the division, other appropriate state agencies, educational entities, and other qualified persons. Each inspector under the jurisdiction of the chief shall attend a certification program free of charge and complete the certification requirements of this section.

(d) The director shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to effectuate the purposes of this article.

(e) Upon a person’s successful completion of the certification requirements, the director shall provide proof
of the completion by issuing a numbered certificate and a wallet-sized card to that person. The division shall maintain a record of each certificate issued and the person to whom it was issued.

(f) The certified logger shall submit a fee of $150 for the initial certification application and the renewal application every two years thereafter.

(g) Every timbering operation that is required to be licensed under §19-1B-4 of this code must have at least one person certified pursuant to this section supervising the operation at any time the timbering operation is being conducted. All timbering operators shall be guided by the West Virginia forest practice standards and the West Virginia silvicultural best management practices to reduce sediment movement during a timber operation.

(h) The director shall, at no more than five-year intervals, convene a committee to review the best management practices to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person researching silvicultural best management practices, a person in the field of silviculture, two loggers certified under this article, a representative of the Division of Water and Waste Management of the Department of Environmental Protection, and a representative of an environmental organization. The director shall chair the committee and may amend the best management practices according to the suggestions of the committee for the next certification cycle.

§19-1B-10. Orders of the director.

Notwithstanding the provisions of §19-1B-5 of this code, whenever the director determines that any person has violated a provision of this article or any rules promulgated pursuant thereto, he or she may enter an order directing the person to cease the violation and, where appropriate, to take
such action to remediate damage created or to take action appropriate for the specific site.

Any person having an interest which is or may be adversely affected by any order of the director may file an appeal in accordance with the provisions of §19-1B-11 of this code. Any person or entity aggrieved by an order issued under the provisions of §19-1B-5(b) or §19-1B-5(c) of this code may file an appeal under the provisions of §19-1B-11 of this code.

Any persons or entity aggrieved by a suspension or revocation order issued under the provisions of §19-1B-5(e) or §19-1B-5(f) of this code may file an appeal in accordance with the provisions of §29A-5-1 et seq. and §29A-6-1 et seq. of this code.

§19-1B-12a. Criminal and civil penalties.

(a) It is illegal for a person to:

(1) Conduct timbering operations, purchase timber, or buy logs for resale in this state without holding a valid license from the Director of the Division of Forestry, as required by §19-1B-4 of this code;

(2) Conduct timbering operations or sever trees for sale at a location in this state without providing the Director of the Division of Forestry with notice of the location where the timbering or harvesting operations are to be conducted, as required by §19-1B-6 of this code;

(3) Conduct a timbering operation in this state that is not supervised by a certified logger who holds a valid certificate from the Director of the Division of Forestry, as required by §19-1B-7 of this code;

(4) Continue to conduct timbering operations in violation of a suspension or revocation order that has been issued by the Director of the Division of Forestry or a
conference panel under §19-1B-5, §19-1B-10, or §19-1B-11 of this code; and

(5) Fail to reclaim the real property in accordance with the best management practices set forth by the Division of Forestry and the committee established in §19-1B-7(h) of this code.

(b) Criminal and civil penalties. — A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, shall be: (1) Fined not less than $250 nor more than $500 for the first offense; (2) fined not less than $500 nor more than $1,000 for a second offense; (3) fined not less than $1,000 nor more than $5,000, or confined in jail not more than 30 days, or both, for a third or subsequent offense. In addition to fines and costs, a person or entity convicted of a violation of this section shall pay a $500 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 State Treasurer for deposit in the Division of Forestry Timber Operations Enforcement Fund (3082) for use in administering the provisions of this article.

(c) Each day that a person is in violation of this section constitutes a separate criminal and civil offense.

(d) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, the following individuals who, as a part of their official duties, are authorized by the Director of the Division of Forestry to inspect timbering operations are also authorized to issue citations for any of the listed violations in this article that they have witnessed or confirmed through evidence thereof:

(1) Any forester;

(2) Any forest technician;

(3) Any forestry employee who has a two-year or four-year higher education degree in the field of forestry; or
(4) Any forestry employee that is accompanied by a forestry employee with a two-year or four-year higher education degree in forestry.

The limited authority granted to employees of the Division of Forestry to issue citations to enforce the provisions of this section does not include the power to place any individual or person under arrest except in the case of a third offense misdemeanor violation as defined in subsection (b) of this section.

CHAPTER 9

(Com. Sub. for S. B. 496 - By Senators Sypolt, Smith and Maroney)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to repeal §16-7-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §16-7-5 of said code; and to amend said code by adding thereto a new article, designated §19-11E-1, §19-11E-2, §19-11E-3, §19-11E-4, §19-11E-5, §19-11E-6, §19-11E-7, §19-11E-8, §19-11E-9, §19-11E-10, §19-11E-11, §19-11E-12, §19-11E-13, §19-11E-14, §19-11E-15, §19-11E-16, and §19-11E-17, all relating generally to transferring authority to regulate milk from the Department of Health and Human Resources to the Department of Agriculture; transferring authority to regulate milk and milk products effective July 1, 2019; explaining purpose and scope of article; defining terms; requiring milk producers and those handling or transporting milk or milk products to have and maintain permits; establishing procedure for obtaining permits; mandating certified inspectors of milk production facilities maintain valid licenses; establishing milk and milk product labeling standards; defining “adulteration”;
describing authority and duties of Commissioner of Department of Agriculture regarding milk and milk products; listing prohibited acts; establishing grounds and procedure for suspension, revocation, or denial of permits or licenses; providing for right of hearing and appeal by persons aggrieved by actions taken pursuant to article; establishing criminal penalties for violation of article or rules promulgated thereunder; establishing civil penalties for violation of article or rules promulgated thereunder; allowing commissioner to promulgate rules permitting consent decrees or negotiated settlements of civil penalties; establishing that fees received pursuant to article are to be deposited into Department of Agriculture’s fees account; permitting commissioner to enter into agreements with public or private entities to carry out provisions of the article; protecting trade secrets from disclosure; providing exception; establishing orderly transition of milk regulatory operations to Department of Agriculture; and mandating that Department of Health and Human Resources’ legislative rules regulating milk remain in effect until July 1, 2020, or until earlier superseded by Department of Agriculture regulations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-5. Regulations by state Bureau for Public Health as to milk and milk products.

1 The West Virginia Bureau for Public Health shall adopt regulations to provide clean and safe milk and fresh milk products and, when promulgated, these regulations shall be the minimum requirements to be enforced by local health authorities throughout the state: Provided, That except in any case where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health, or in any case of a willful refusal to permit an authorized inspection, that any regulations promulgated by
the Bureau for Public Health shall provide that prior to any suspension or revocation of a permit issued to any dairy farm, milk plant, receiving station, transfer station, and distribution station, the holder of such permit shall be served with a written notice to suspend or revoke such permit, which notice shall specify with particularity the violations in question and afford the holder reasonable opportunity to correct such violations: Provided, however, That the proposed order to deny, suspend, or revoke a permit may not be effective until notice in writing has been delivered to the holder of such permit who shall have 48 hours therefrom in which to make application to the county health officer for a hearing thereon. The county health officer shall, within 72 hours of receipt of such application, give a notice in writing to the holder of such permit setting forth the time and place of the hearing and proceed to a hearing to ascertain the facts of such violation and upon evidence presented at the hearing shall affirm, modify, or rescind the proposed order to suspend. A copy of the regulations shall be furnished to the Commissioner of Agriculture for his or her guidance in performing any duties with relation to milk and milk products imposed on him or her by law.

Effective July 1, 2019, the Bureau for Public Health may no longer adopt or enforce regulations to provide clean and safe milk and fresh milk products. Effective July 1, 2019, all authority to regulate milk and milk products shall be transferred to the Department of Agriculture.

§16-7-5a. Joint Task Force on Milk Rules and Regulations.

[Repealed.]

CHAPTER 19. AGRICULTURE.

ARTICLE 11E. MILK AND MILK PRODUCTS.

§19-11E-1. Purpose and scope.

In 2018, the Legislature created the Joint Task Force on Milk Rules and Regulations in response to concerns about
The Joint Task Force heard from, and collected data and other information from, dairy farmers, industry representatives, and regulators from West Virginia, other states, and the federal government. Following its review of the collected information, the Joint Task Force concluded that potential benefits and economies of scale would best be realized 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.

It is the purpose of this article to establish the authority of the West Virginia Department of Agriculture to regulate milk and milk products within the state. It is the further purpose of this article to ensure that milk and milk products produced, manufactured, or sold in West Virginia are safe, while also ensuring that regulation is done in such a way as to foster the stability and growth of the dairy industry in West Virginia.

It is the intent of the Legislature that this article regulate the production, transportation, and sale of milk and milk products; confer powers and impose duties upon the Commissioner of Agriculture; prescribe penalties; and provide for the enforcement thereof.

Furthermore, except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States Secretary of Health and Human Services in order to provide for the movement of milk and milk products in interstate and intrastate commerce with a minimum of economic barriers.


“Adulterated” means milk or the products manufactured from milk meeting one or several of the conditions listed in §19-11E-7 of this code.
“Clean” means the condition where no residue remains on a surface that will, or is likely to, cause adulteration or other contamination.

“Commissioner” means the Commissioner of Agriculture of the State of West Virginia or his or her duly authorized agent.

“Distribute” means the act of transporting, holding for sale, offering for sale, selling, bartering, parceling out, giving, or otherwise disposing of milk.

“Embargo” means an order to withdraw milk from distribution. An embargo shall detain such milk or milk product and prohibit the transportation or distribution of milk as provided in §19-11E-8 of this code.

“Manufacture” means pasteurizing, ultrapasteurizing, formulating, or compounding milk; or packaging or preparing said product for distribution; or other methods of preparing milk for consumption.

“Milk” means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy mammals. The term may include the components of milk, including cream. For purposes of this article, the term “milk” does not include raw milk.

“Milk producer” means any person who operates a dairy farm and who provides, sells, or offers milk for sale.

“Person” means any individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not. The term “person” extends to the agents, servants, officers, and employees of the person.

“Receiving station” means any place, premises, or establishment where milk in unpackaged form is received, collected, handled, stored, or cooled and prepared for further transporting.
“Transport” means the movement of milk or milk products from one facility to another in a manner that maintains adequate temperatures and protects the product from freezing temperatures, exposure to the sun, and from sources of contamination.

“Transfer station” means any place, premises, or establishment where milk is transferred directly from one transport tank to another.

“Transport tank” means any tank which is used for the pickup of milk or the transportation of milk to or from any milk producer, dairy plant, receiving station, or transfer station.

§19-11E-3. Department to regulate milk and milk products.

Effective July 1, 2019, the Department of Agriculture shall be responsible for regulating all matters addressed in the Grade “A” Pasteurized Milk Ordinance issued by the federal Food and Drug Administration. This includes, but is not limited to, inspection of milk production facilities, inspection of facilities making single-use containers for dairy products, collection and testing of milk samples, and training and certification of inspectors.


(a) A person may not sell milk, milk products, or manufactured dairy products within this state without having a current, valid permit from the Commissioner of Agriculture.

(b) A separate permit shall be obtained for each milk plant, milk producer, milk distributor, receiving station, transfer station, bulk tank unit, and milk tank truck cleaning facility.

(c) Permits are not transferable with respect to persons or locations.
(d) Permits shall be applied for at least 30 days before the date that the current permit expires or within 30 days of the date that the person intends to engage in business. Applications for all permits shall be made on forms supplied by the commissioner and provide such information as may be considered reasonably necessary by the commissioner. All applications shall be accompanied by an application fee. A penalty shall be added to all permits that are not applied for or renewed within the time limits set forth in this subsection.

(e) Permits shall be posted prominently at the place of operation.

(f) Within 30 days of receiving a complete application for an initial permit, the commissioner will inspect the applicant’s operation to determine whether it meets the standards set forth by this code and rules promulgated pursuant thereto that would be applicable if the applicant received the permit applied for. If the applicant satisfies those requirements, the commissioner shall issue the permit.

(g) Permits shall be valid for one year.

§19-11E-5. Licenses.

(a) Licenses shall be issued by the commissioner to certified inspectors of milk production facilities. Licenses are not transferable.

(b) Applications for licenses shall be made on forms supplied by the commissioner and shall provide such information as may be considered reasonably necessary by the commissioner for the administration of this article.

(c) Licenses shall expire on June 30 following the date of issue. License renewals shall be applied for at least 15 days previous to the date when the current license expires. The commissioner may assess a penalty for licenses that are not applied for or renewed within this time limit.

(a) All packages of milk or milk products shall have a label upon or affixed to the package. The label shall be legible and of a print size and style easily readable by the ordinary citizen. The information required in this section shall be on each label and shall be stated in English.

(b) The label shall contain the following information:

(1) The name of the product;

(2) The quantity of the contents;

(3) The name and address of the manufacturer, packer, or distributor: Provided, That the manufacturer’s plant code or name and address shall always appear on the label for Grade “A” products; and

(4) Such other information as the commissioner shall require by rule.


Any milk or any milk products are considered adulterated within the meaning of this article if:

(1) They bear or contain any poisonous or deleterious substance or compound in a quantity which may render it injurious to health;

(2) They bear or contain any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal law or regulation or which is found in the product in excess of an established tolerance;

(3) They are or have been produced, transported, or held under unsanitary conditions;

(4) They contain any substance added thereto so as to make them appear better or of a greater value than they are; or
(5) They meet or have met other conditions of adulteration as established by rule.

§19-11E-8. Authority and duties of the commissioner.

The commissioner has the power and duty to:

(1) Propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, including adopting with any necessary modifications the Grade “A” Pasteurized Milk Ordinance promulgated by the Food and Drug Administration;

(2) Adopt, promulgate, and enforce other rules for legislative approval in accordance with §29A-3-1 et seq. of this code as necessary to carry out the purpose of this article;

(3) Have access to and enter at all reasonable times all places where frozen desserts or imitation frozen desserts are manufactured, stored, held, transported, distributed, or used in the state and where records, papers, or documents relating to these transactions are kept;

(4) Inspect and photograph all places where milk is manufactured, packaged, stored, held, transported, or distributed; inspect, audit, and copy records and papers relating to the manufacturing, distribution, sampling, testing, and sale of milk; examine measuring and testing apparatus; and examine equipment used in manufacturing and transportation of milk;

(5) Sample milk, including, but not limited to, ingredients and packages that are used in the manufacture of these products and may open any package containing or believed to contain any milk or milk product or an ingredient to be used in the manufacture of milk or a milk product for the purpose of inspecting and sampling;

(6) Issue, suspend, revoke, or deny permits;
(7) Collect fees and expend moneys under the terms of this article;

(8) Collect evidence, including samples, of the condition of equipment, holding tanks, storage rooms, and vehicles used, or intended to be used, in the processing, packaging, transporting, or holding of milk or milk products;

(9) Examine the labels and labeling of milk and milk products;

(10) Issue embargoes for any milk or milk product which is or is believed to be adulterated, misbranded, or that is not in compliance with this article and to cause the manufacturing and distributing of same to cease: Provided, That nothing in this article may be construed as requiring the commissioner to issue embargoes for minor violations of this article when he or she believes that a written notice of violation will serve the public interest:

(A) When an embargo is issued, the commissioner shall affix to such product or manufacturing device in an appropriate manner a tag or other marking giving warning that such product is under embargo;

(B) The commissioner shall give written notice to the custodian of the product or process under embargo describing the violation and stating that the product is prohibited from being sold, offered for sale, exposed for sale, or distributed and is ordered to be held on the premises and, further, that all manufacturing processes for this product shall cease until the embargo is released. This notice shall notify the custodian of the right to request an immediate hearing under the rules adopted by the commissioner;

(C) The commissioner shall take action to seize and condemn any product that cannot be brought into
compliance with this article and the rules issued under same within 90 days of notice to the custodian of the product;

(D) The commissioner may issue an embargo against a perishable product even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this article;

(11) Approve sampling and testing methods, and evaluate and approve official laboratories;

(12) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(13) Conduct hearings as provided by this article; and

(14) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution minor violations of the article when he or she believes that the public interest will be best served by a suitable notice in writing.


No person may:

1. Have in his or her possession with the intent to sell, transport, or manufacture any milk which is adulterated within the meaning of this article;

2. Interfere with or prohibit the commissioner from performing the duties of his or her office;

3. Fail to comply with the provisions of an embargo order issued under this article;
(4) Fail to comply with the provisions of a revocation, suspension, or denial order issued under this article;

(5) While operating in any official capacity, obtain any information under the provisions of this article that would be considered trade secrets regarding the quality, source, and disposition of milk, and use this information for his or her own personal gain;

(6) Sell milk or milk products, where required, without a valid permit as required by the provisions of this article;

(7) Conduct inspections of milk production facilities for the purpose of certifying compliance with this article without a valid inspector license, and perform those duties in a dishonest or incompetent manner, or falsify the records thereof;

(8) Sell, offer for sale, or expose for sale any milk that is from a herd that does not meet the requirements for animal health as set by rule under this article;

(9) Represent an imitation dairy product to be a milk product;

(10) Conduct a test to determine the identity, quality, purity, grade, or quantity of a dairy product in a manner that is not in accordance with the Pasteurized Milk Ordinance; or

(11) Alter or destroy the results of a test conducted to determine the identity, quality, purity, grade, or quantity of a dairy product.

§19-11E-10. Suspension, revocation, or denial of permits or licenses.

(a) The commissioner may deny any application for a permit, license, or certificate whenever the permit, license, or certificate has been applied for fraudulently, the applicant has grossly interfered with the duties of the commissioner,
the applicant is determined to be not in compliance with or
not able to comply with this article, or the applicant has not
otherwise satisfied the requirements of this article.

(b) The commissioner may suspend a permit, license, or
certificate whenever a health hazard exists, the permit,
license, or certificate has been obtained fraudulently, the
holder has grossly interfered with the duties of the
commissioner, or it is determined that the permit, license, or
certificate holder is dishonest, deceitful, incompetent, or not
in compliance with, or is unable to comply, with this article.
A person whose permit, license, or certificate has been
suspended shall discontinue operations covered by the
permit, license, or certificate during the period of the
suspension. The commissioner may issue a summary
suspension in cases where violations of this article
constitute a hazard to the public health, safety, or welfare
where the public interest requires immediate action.

(1) Except for summary suspensions, the commissioner
or his or her designee shall give written notice to the
person(s) affected by the pending suspension, stating that he
or she contemplates suspension of the permit, license, or
certificate and giving reasons therefor. The suspension
notice shall appoint a time and place for hearing and shall
be mailed by certified mail to the business address of the
permit, license, or certificate holder at least 10 days before
the date set for the hearing. The commissioner shall review
the evidence presented at the hearing prior to issuing his or
her decision.

(2) All summary suspensions shall be followed by a
notice of suspension, the reasons therefor, and an
opportunity for a hearing in accordance with this article.

(3) At the end of the period of suspension, the permit,
license, or certificate holder may resume operations without
reapplication for a permit, license, or certificate.
(c) The commissioner may revoke any permit, license, or certificate issued under this article whenever a health hazard exists, the permit, license, or certificate has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner, or it is determined that the holder is dishonest, deceitful, incompetent, or not in compliance with, or is unable to comply with, this article. Any person whose permit, license, or certificate has been revoked shall immediately discontinue all operations covered under the permit, license, or certificate.

(1) Before revoking any permit, license, or certificate, the commissioner shall give written notice to the persons affected, stating that the revocation of the permit, license, or certificate is being contemplated and giving reasons therefor. The revocation notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit, license, or certificate holder at least 10 days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) At the end of the period of revocation a new permit, license, or certificate may not be issued without the filing of an application, payment of the required fee, and compliance with all conditions that the commissioner shall require for the reissuing of such permit, license, or certificate.

(d) Whenever the commissioner suspends or revokes any permit, license, or certificate based on a health hazard, he or she shall contact the county health officer, the Bureau for Public Health, and the federal Food and Drug Administration for the county in which the health hazard exists.


(a) Any person aggrieved by any action taken under this article shall have the opportunity for a hearing before the
(b) Hearings shall be conducted according to procedures set forth by rule.

(c) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for 90 days from the date of the hearing and a transcript shall be made available to the aggrieved party.

(d) Any party who feels aggrieved of the suspension, revocation, or denial order may appeal within 60 days to the circuit court of the county in which the person’s principal place of business is located.

§19-11E-12. Criminal penalties; civil penalties; negotiated agreements.

(a) Any person violating any provision of this article or rules adopted hereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense, and for the second or subsequent offense shall be fined not less than $500 nor more than $1,000, or confined in jail not more than six months, or both fined and confined. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public, and any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance with this article before and after written notification of the violation.
(1) The commissioner may assess a civil penalty of up to $1,000 for any violation.

(2) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(d) Nothing in this article may be construed as requiring the commissioner or his or her representative to report for prosecution as a result of minor violations of the article when the commissioner believes that the public interest will be best served by a suitable notice of warning in writing.

(e) Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred, or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(f) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for the action.
(g) The prosecuting attorney of the county in which the violation occurred shall represent the Department of Agriculture to institute proceedings and to prosecute the person charged with a violation.


All fees, penalties, or other moneys collected by the commissioner under the provisions of this article shall be paid into the Department of Agriculture’s fees account.

§19-11E-14. Cooperation with other entities.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, agencies of foreign governments, and private entities in order to carry out the purpose and provisions of this article.


The commissioner may not make public information which contains or relates to trade secrets, commercial, or financial information obtained from a person, or privileged or confidential information: Provided, That when revealing the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state, or local agency consultant; or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.


(a) The commissioner shall establish a Dairy Advisory Board within the Department of Agriculture. The purpose of that board is to advise the commissioner with respect to the status of the dairy industry in West Virginia, obstacles to manufacture, processing, and sale of milk and milk products, recommendations with respect to changes in statutes and regulation, changes in technology and
processes utilized by the dairy industry, and other hindrances to growth of the industry in West Virginia.

(b) The commissioner shall, by rule, establish minimum requirements and qualifications for the members of the advisory board.

§19-11E-17. Transfer of milk regulation authority from Department of Health and Human Resources to Department of Agriculture.

(a) Effective July 1, 2019, authority for the regulation, including enforcement, of Grade “A” milk is hereby transferred to the commissioner from the Department of Health and Human Resources.

(b) Prior to July 1, 2019, the commissioner and the Department of Health and Human Resources shall enter into an agreement to provide for the orderly transition of regulatory operations from the Department of Health and Human Resources to the commissioner. Said agreement shall provide:

(1) For the transfer of records and equipment related to the milk regulation program to the commissioner;

(2) For the continued provision of services by staff of the Department of Health and Human Resources to the commissioner under the terms of the agreement;

(3) For transition, upon notice to Department of Health and Human Resources, of functions from the Department of Health and Human Resources to the commissioner; and

(4) For the completion of the transfer of all responsibilities from the Department of Health and Human Resources to the commissioner no later than December 31, 2019.

(c) During a period from July 1, 2019, to December 31, 2019, the Department of Health and Human Resources shall
cooperate fully with the commissioner to ensure a smooth transition of authority, knowledge, and resources to guarantee that milk regulation in West Virginia suffers no gap or failure in regulation.

(d) All legislative rules issued by the Department of Health and Human Resources pursuant to its authority to regulate milk shall remain in effect until superseded by the commissioner’s regulations.

CHAPTER 10
(S. B. 627 - By Senator Sypolt)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §19-1-11 of the Code of West Virginia, 1931, as amended, relating generally to the Rural Rehabilitation Loan Program; authorizing the Commissioner of Agriculture to utilize other governmental entities, in addition to the State Treasurer, to service the loan program; and exempting the loan program from having to utilize the State Agency for Surplus Property to dispose of repossessed items.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-11. Rural Rehabilitation Loan Program.

(a) The Rural Rehabilitation Loan Program is an important tool for the Commissioner of Agriculture to promote investment in the agricultural industry in the state. Rules are needed for the loan program to remain viable.
(b) The commissioner shall propose emergency and legislative rules for approval in accordance with §29A-3-1 et seq. of this code. The rules shall, at a minimum:

1. Establish minimum requirements and qualifications for the loan committee, including the addition of public members who have agricultural or business loan experience;
2. Prohibit department employees and loan committee members, and their immediate family members, from receiving program loans;
3. Establish minimum financial requirements for receiving a program loan;
4. Require loans to be used for agricultural or related purposes;
5. Require collateral sufficient to secure the loan;
6. Establish policies for the application, applicable interest rates, delinquencies, refinancing, collection proceedings, collateral requirements, and other aspects of the loan program;
7. Require the department to advertise the loan program to the public, including information on the department’s website and in the department’s market bulletin; and
8. Transfer the servicing of the program loans to a financial institution via competitive bid or to the State Treasurer’s office or other governmental entity.

(c) The commissioner shall file an annual report to the Joint Committee on Government and Finance regarding the loan program, including information about the loans awarded, loans repaid, loans outstanding, interest rates, delinquency and collections, and other pertinent data.
(d) The commissioner shall not be required to utilize the services of the State Agency for Surplus Property for the disposition of items purchased by participants in the loan program and subsequently repossessed by the committee to be sold in order to satisfy the balance of an outstanding loan.

CHAPTER 11

(S. B. 655 - By Senator Trump)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §19-21A-3 and §19-21A-4 of the Code of West Virginia, 1931, as amended, all relating to conservation districts generally; clarifying the authority of the State Conservation Committee to operate and administer a conservation grant program; providing financial assistance to conservation districts and others to promote approved conservation practices; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. CONSERVATION DISTRICTS.


Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) “Agency of this state” means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) “Committee” or “State Conservation Committee” means the agency created in §19-21A-4 of this code.
(3) “District” or “conservation district” means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(4) “Grant” means the providing of grants for conservation purposes pursuant to legislative rule.

(5) “Governing body” means the supervisors of any conservation district, town or city, council, city commission, county court, or body acting in lieu of a county court, in this state, and the term “governmental division” means any conservation district, town, city, or county in this state.

(6) “Land occupier” or “occupier of land” means any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter, or tenant.

(7) “Landowners” or “owners of land” means any person or persons, firm, or corporation who holds title to any lands lying within a district organized under the provisions of this article.

(8) “Notice” means notice 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 is the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in the notice, adjournment may be made, from time to time, without the necessity of renewing the notice for the adjournment dates.

(9) “Petition” means a petition filed under the provisions of §19-21A-5(a) of this code for the creation of a district.

(10) “Soil conservation”, “erosion control”, or “erosion prevention projects” means those projects that have been
established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(11) “State” means the State of West Virginia.

(12) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(13) “United States” or “agencies of the United States” means the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(14) “Works of improvement” means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization, or disposal of water.

§19-21A-4. State Conservation Committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following 10 members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the state Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;
(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts, and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties, and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of
learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of the agency or institution of learning and make special reports, surveys, or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules, and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and
experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis;

(5) 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 of its proper departments, bureaus, or agencies relating to natural disaster response, natural disaster recovery, or stream restoration related to flooding;

(6) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(7) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(8) Administer a conservation grant program that provides financial assistance to conservation districts and others to promote approved conservation projects;

(9) Accept and receive donations, gifts, contributions, grants, and appropriations in money, services, materials, or otherwise from the United States or any of its agencies, from the State of West Virginia, or from other sources and use or expend the money, services, materials, or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services, or materials in part to the various conservation
(10) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate, and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration, or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease, or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article.

(11) To promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the 2018 regular session of the Legislature.

(12) Upon a Governor’s proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor’s proclamation or the federal disaster declaration.
CHAPTER 12

(Com. Sub. for H. B. 2396 - By Delegates R. Thompson and Lovejoy)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-37-1, §19-37-2, and §19-37-3, all relating to requiring all state-funded institutions to purchase a minimum of five percent of fresh produce, meat and poultry products from in-state producers if available; providing legislative findings and purpose; and establishing rule-making authority and enforcement authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.

§19-37-1. Legislative findings and purpose.

(a) According to the West Virginia Farm Bureau state schools alone currently purchase $100 million of food from out-of-state sources.

(b) Locally grown food is healthier and more beneficial to the environment than food imported from other states and other countries.

(c) This article will:

(1) Stimulate the agricultural economy of the state, especially in its economically depressed areas, and allow small farmers to expand operations as well as act as an incentive to new people to begin farming;
(2) Encourage state-funded institutions to begin growing their own produce, thus enabling people to learn and practice agricultural techniques, as well as lowering operational costs of those institutions; and

(3) Spur self-sufficiency and economic independence of those who learn and engage in agricultural activities.

§19-37-2. State-funded institutions to purchase food from in-state sources; exception.

Beginning July 1, 2019, all state-funded institutions, such as schools, colleges, correctional facilities, governmental agencies and state parks, shall purchase a minimum of five percent of its fresh produce, meat and poultry products from in-state producers: Provided, That such produce, meat and poultry products can be grown or is available from in-state producers.


The Commissioner of Agriculture shall be charged with the enforcement of this article and shall have authority to make and enforce rules and regulations for the administration of this article.
Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §19-12E-10 and §19-12E-11, all relating generally to the Industrial Hemp Development Act; adding and modifying definitions; updating code to reflect changes in federal law; clarifying that no person may grow, cultivate, possess, or process industrial hemp without a license from the Department of Agriculture; requiring certain documentation requested by the commissioner to be submitted by licensees; authorizing commissioner to submit plan for state regulation of industrial hemp to United States Department of Agriculture; requiring licensee to provide prior written consent for law enforcement to enter the premises; providing that a license is not necessary to possess, handle, transport, or sell hemp products and extracts; setting standards regarding sale of industrial hemp products; requiring plan to comply with federal law; providing for continued legality of hemp production in absence of submitted plan; providing for handling negligent violations; addressing handling of non-negligent violations; requiring notification of attorney general and law enforcement under certain circumstances; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-3. Definitions.

1 As used in this article:

2 (a) “Cannabidiol” or “CBD” means the compound by
3 the same name derived from the hemp variety of the
4 cannabis sativa L. plant;

5 (b) “Commercial sales” means the sale of products in
6 the stream of commerce, at retail, wholesale, and online;

7 (c) “Commissioner” means the Commissioner of
8 Agriculture or his or her designee;
(d) “Cultivating” means planting, watering, growing, and harvesting a plant or crop;

(e) “Department” means the West Virginia Department of Agriculture and its employees;

(f) “Handling” means possessing or storing hemp plants for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process hemp. “Handling” also includes possessing or storing hemp plants in a vehicle for any period of time other than during its actual transport from the premises of one licensed person to cultivate or process industrial hemp to the premises of another licensed person. “Handling” does not mean possessing or storing finished hemp products;

(g) “Hemp” or “industrial hemp” means all parts and varieties of the plant Cannabis sativa L. and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with no greater than 0.3% tetrahydrocannabinol, or the THC concentration for hemp defined in 7 U.S.C. § 5940, whichever is greater;

(h) “Hemp products” means all products derived from, or made by, processing hemp plants or plant parts, that are prepared in a form available for commercial sale;

(i) “Licensee” means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp;

(j) “Marijuana” means all plant material from the genus cannabis containing more than one percent tetrahydrocannabinol or seeds of the genus capable of germination;

(k) “Processing” means converting an agricultural commodity into a marketable form; and
“THC” means tetrahydrocannabinol. Notwithstanding any other provision of this code to the contrary, the THC found in industrial hemp shall not be considered to be THC for the purposes of qualifying as a controlled substance.

§19-12E-4. Industrial hemp authorized as agricultural crop; license required.

(a) Industrial hemp is considered an agricultural crop in this state if grown for the purposes authorized by the provisions of this article. Upon meeting the requirements of §19-12E-5 of this code, an individual in this state may plant, grow, harvest, possess, process, sell or buy industrial hemp.

(b) A person shall not cultivate, handle, or process industrial hemp in this state unless the person holds an industrial hemp license issued by the department.

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

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

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

(c) The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(1) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:
(A) Submitting fingerprints; and

(B) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(2) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(3) The criminal history record check and related records are not public records for the purposes of §29B-1-1 et seq. of this code.

(4) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(d) If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid until December 31 of the year of application: Provided, That an individual applying to renew a current license may continue to operate under an existing license, as long as his or her completed renewal application has been submitted to the department on or before the deadline established by the department.

(e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the Department prior written consent allowing the Department, State Police, and other state and local law enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated,
processed, or stored to conduct physical inspections or otherwise ensure compliance with the requirements of this code and the legislative rules promulgated pursuant to this code.

(f) Sale of industrial hemp products —

(1) Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD.

(2) Hemp-derived cannabinoids, including CBD, are not controlled substances or adulterants.

(3) Products containing one or more hemp-derived cannabinoids, such as CBD, intended for ingestion are to be considered foods, not controlled substances or adulterated products.

(4) Applicable state agencies shall make available any and all customary registrations to the processors and manufacturers of hemp products.

(5) Retail sales of hemp products may be conducted when the products and the hemp used in the products were grown and cultivated legally in another state or jurisdiction and meet the same or substantially the same requirements for processing hemp products or growing hemp under this article and rules promulgated under §19-2E-7 of this code.

(6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp, including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and products intended for animal or human consumption, and the addition is not considered an adulteration of the products.

(7) Hemp and hemp products may be legally transported across state lines, and exported to foreign nations, consistent
with U. S. federal law and laws of respective foreign nations.

§19-12E-6. Industrial hemp production – notification.

(a) Every licensee shall file with the commissioner:

1. Documentation showing that the seeds planted are of a type and variety certified to contain no more than 0.3% tetrahydrocannabinol;

2. A copy of any contract to grow industrial hemp; and

3. Any other document required to be submitted by the commissioner.

(b) Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, including, but not limited to, the name and address of the person or entity receiving the industrial hemp and the amount of industrial hemp sold.

§19-12E-7. Rule-making authority.

The commissioner shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code that include, but are not limited to:

1. Licensing persons who wish to grow, cultivate, handle, or process industrial hemp;

2. Sampling and testing of the industrial hemp to determine tetrahydrocannabinol levels;

3. Supervision of the industrial hemp during its growth and harvest;

4. Assessment of fees that are commensurate with the costs of the commissioner’s activities in licensing, testing, and supervising industrial hemp production;

5. The production and sale of industrial hemp;
(6) The production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD; and

(7) Any other rules and procedures necessary to carry out the purposes of this article.

§19-12E-8. Disposition of fees.

All fees assessed as provided for in §19-12E-5 of this code must be deposited with the state treasurer to the credit of the “Agricultural Fees Fund” established by the provisions of §19-1-4c of this code for the use of the commissioner for administering and enforcing the provisions of this article.


(a) It is a complete defense to a prosecution for the possession or cultivation of marijuana pursuant to the provisions of §60A-4-401 et seq. of this code that defendant was growing industrial hemp pursuant to the provisions of this article.

(b) This section is not a defense to a charge of criminal sale or distribution of marijuana as defined in §60A-1-101 et seq. of this code which does not meet the definition of industrial hemp.

§19-12E-10. State regulation of industrial hemp.

(a) The commissioner may submit to the Secretary of the United States Department of Agriculture, for his or her approval, a plan under which this state monitors and regulates the production of industrial hemp. The plan shall comply with the requirements of 7 U.S.C. § 1621 et seq. and any other requirements established by the United States Department of Agriculture.
(b) Nothing in this section prohibits the production of industrial hemp in this state if the commissioner declines to submit a plan, or if a submitted plan is not approved by the United States Department of Agriculture in accordance with other federal laws and regulations.

§19-12E-11. Violations; negligent violations; notice.

(a) A licensee in this state that does not comply with any approved plan is subject to §19-12E-11(b) of this code if the department determines the licensee has negligently violated the state plan by:

(1) Failing to provide a legal description of the land on which the licensee produces hemp;

(2) Failing to obtain a license or other required authorization from the West Virginia Department of Agriculture; or

(3) Producing industrial hemp containing more than 0.3% of tetrahydrocannabinol.

(b) A licensee described in subsection (a) of this section shall comply with any requirements established by the department to correct any negligent violation, including:

(1) A reasonable date by which the hemp producer shall correct the negligent violation; and

(2) In the discretion of the commissioner, any requirement that the licensee shall periodically report to the department the licensee’s compliance with the state plan for at least two calendar years from the date of the negligent violation.

(c) A licensee that negligently violates the provisions of this article, legislative rules promulgated pursuant to this article, or this state’s approved plan authorized pursuant to §19-12E-10 of this code three times in a five-year period, is
ineligible to produce hemp in this state for a period of five years beginning on the date of the third violation.

(d) If the department determines that a licensee in this state has intentionally violated the provisions of this article, legislative rules promulgated pursuant to this article, or this state’s approved plan authorized pursuant to §19-12E-10 of this code, the provisions of §19-12E-11(b) of this code shall not apply to the violation and the department shall report the licensee to:

(1) The attorney general;

(2) The sheriff of the county in which the hemp is being grown; and

(3) The local detachment of the West Virginia State Police.

(e) Absent a notification pursuant to subsection (d) of this section, a licensee that negligently violates state laws or rules is not subject to any criminal or civil enforcement action by any state, county, or municipal government.

CHAPTER 14

(Com. Sub. for H. B. 3007 - By Delegates Nelson, Harshbarger, Cadle, Atkinson, Cooper, Pack and Porterfield)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-3b, relating to authorizing the Commissioner of Agriculture to require background checks as a condition of employment; providing
legislative findings; describing background check procedure; making background check results confidential; providing exceptions; designating background checks and related documents not to be considered public records under chapter 29B of said code; prohibiting disqualification of applicant for criminal conviction not bearing rational nexus to employment category; barring consideration of crimes of moral turpitude in hiring; allowing reapplication after disqualification from employment; establishing procedure for individual obtaining preapplication determination if criminal record will disqualify individual from employment; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3b. Background checks as condition of employment.

(a) The commissioner may, as a condition of employment, require an applicant for a position to submit to a state and national criminal history record check. This requirement is found not to be against public policy.

(b) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation. The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for employment.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:
To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(e) The commissioner may not disqualify an applicant for employment because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the employment category.

(f) The commissioner may not use crimes involving moral turpitude in making employment determinations.

(g) If an applicant is disqualified for employment because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for employment after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: Provided, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the commissioner by rule.

(h) An individual with a criminal record who has not previously applied for employment may petition the commissioner at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining employment. This petition shall include sufficient details about the individual’s criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The commissioner shall
inform the individual of his or her standing within 60 days
of receiving the petition from the applicant.

(i) The commissioner shall propose rules or
amendments to existing rules for legislative approval to
comply with the provisions of this section. These rules or
amendments to rules shall be proposed pursuant to the
provisions of §29A-3-1 et seq. of this code within the
applicable time limit to be considered by the Legislature
during its regular session in the year 2020.

CHAPTER 15

(Com. Sub. for S. B. 511 - By Senators Trump and
Boso)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section designated §60-1-5c; to
amend and reenact §60-4-3b of said code; to amend and
reenact §60-8-3 and §60-8-17 of said code; and to amend said
code by adding thereto two new sections, designated §60-8-
3a and §60-8-6b, all relating to wine production and wine
sales generally; creating alternating wine proprietorships for
wineries and farm wineries and setting forth requirements for
the proprietorships; authorizing farm entities in
proprietorships to manufacture and sell wine; authorizing
certain groceries to sell wine through mobile applications and
web-based internet sales with at-store pickup; clarifying
tasting, sampling, and sale procedures and requirements for
wineries and farm wineries; permitting wineries or farm
wineries to sell wine for on-premises and off-premises
consumption at festivals and fairs; establishing a wine club
license for festivals and fairs and setting forth requirements; permitting certain charitable events to auction wine bottles for off-premises consumption; defining terms; limiting number of charitable auction licenses; permitting the sale of wine in Division II and III college stadiums; authorizing wine specialty shops to obtain an additional license privilege to deliver wine with gift baskets and setting forth requirements; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; and authorizing the commissioner to propose rules for promulgation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5c. Alternating wine proprietorships; requirements and limitations.

(a) Notwithstanding the provisions of §60-1-5 of this code, a licensed winery or farm winery may be a party to an alternating wine proprietorship agreement subject to the provisions of this section. As used in this section, “alternating wine proprietorship agreement” means an agreement between a licensed winery or farm winery and a farm entity which allows the farm entity to use the premises of the licensed farm winery to produce wine.

(b) For an alternating wine proprietorship agreement to be lawful:

(1) The farm winery and the farm entity must be in compliance with applicable state laws and rules promulgated thereunder;

(2) The agreement must be between a licensed winery or farm winery and a farm entity located and operating in this state;
(3) The farm entity must produce agricultural products containing sugar as certified by the Agriculture Commissioner and required by law;

(4) Wines produced by the parties must be maintained in separate bonded areas and shall not be comingle;

(5) The farm entity participating in the agreement must separately meet all federal and state requirements for a winery or farm winery;

(6) The farm entity party to the agreement may not produce more than 50,000 gallons of wine and nonfortified dessert wine;

(7) Wine produced by the farm entity party to an agreement must be produced exclusively by natural fermentation;

(8) If port, sherry, or madeira wines are produced by the farm entity party to the agreement, a minimum of 25 percent of the agricultural products used to make the wine must be produced on the farm entity’s property and no more than 25 percent of the agricultural products used may come from an out-of-state source; and

(9) Port, sherry, or madeira wine produced by a party to an alternating wine proprietorship agreement may not exceed 22 percent alcohol by volume and must be matured in wooden barrels or casks.

(c) The commissioner shall propose rules for promulgation in accordance with §29A-3-1 et seq. of this code necessary to effectuate the provisions of this section.

ARTICLE 4. LICENSES.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity
authorized by §60-1-5c of this code for retail sale to customers from the winery or farm winery for consumption off the premises only. Except for free complimentary samples offered pursuant to §60-6-1 of this code, customers are prohibited from consuming any wine on the premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code unless such winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: Provided, That a licensed winery or farm winery may offer complimentary samples per this subsection of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss of this code.

(b) Complimentary samples allowed by the provisions of this section may not exceed two fluid ounces and no more than three such samples may be given to a patron in any one day.

(c) Complimentary samples may be provided only for on-premises consumption.

(d) A winery, farm winery, or farm entity pursuant to §60-1-5c of this code may offer for retail sale from their licensed premises sealed original container bottles of wine for off-premises consumption only.

(e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code holding a multi-capacity license and a private wine restaurant license may offer wine by the drink or glass in a private wine restaurant located on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

(f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 et seq., §60-4-1 et seq., and §60-8-1 et seq. of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.
(g) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 et seq. of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package if the final purchase of such wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) No liter tax shall be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of such wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

(h) A winery or farm winery may advertise a particular brand or brands of wine produced by it and the price of the wine is subject to federal requirements or restrictions.

(i) A winery or farm winery must maintain a separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and must pay all associated license fees, unless such winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multicapacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its
wine as specified in §60-6-2 of this code; private wine
restaurant; and direct shipper for wine produced by the
winery or farm winery. All wineries must use a distributor
to distribute and sell their wine in the state, except for farm
wineries. No more than one winery or farm winery license
may be issued to a single person or entity and no person may
hold both a winery and a farm winery license. Wineries or
farm wineries may enter into alternating wine proprietorship
agreements pursuant to §60-1-5c of this code.

(j) For purposes of this section, terms will have the same
meaning as provided in §8-13-7 of this code.

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of
a winery, farm winery, supplier, distributor, retailer, private
wine bed and breakfast, private wine restaurant, private
wine spa, or wine specialty shop without first obtaining a
license from the commissioner, nor shall a person continue
to engage in any activity after his or her license has expired,
been suspended, or revoked. No person may be licensed
simultaneously as a distributor and a retailer. No person,
except for a winery or farm winery, may be licensed
simultaneously as a supplier and a retailer. No person may
be licensed simultaneously as a supplier and a private wine
bed and breakfast, private wine restaurant, or a private wine
spa. No person may be licensed simultaneously as a
distributor and a private wine bed and breakfast, a private
wine restaurant, or a private wine spa. No person may be
licensed simultaneously as a retailer and a private wine bed
and breakfast, a private wine restaurant, or a private wine
spa.

(b) The commissioner shall collect an annual fee for
licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier’s
license;
(2) Two thousand five hundred dollars per year for a distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer’s license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;
(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee shall be charged for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) One hundred fifty dollars per year for a direct shipper’s license for a licensee who sells and ships only wine and $250 per for a direct shipper’s license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines; and

(12) Three hundred dollars per year for a multicapacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 et seq. of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 et seq. of this code: Provided, That a delicatessen, a caterer, or party supply store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: Provided, however, That any delicatessen, caterer, or party supply store licensed in both capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.
(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine specialty shop shall organize a wine taster’s club, which has at least 50 duly elected or approved dues-paying members in good standing. Such club shall meet on the wine specialty shop’s premises not more than one time per week and shall either meet at a time when the premises are closed to the general public or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer’s license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such license shall be issued for a term of no longer than 10 consecutive days and the fee for the license shall be $250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair license is the manufacturer of said wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is $50 per festival or fair.

(3) A licensed winery or a farm winery, which has the festival or fair licensee’s written authorization and approval
from the commissioner, may, in addition to or in
conjunction with the festival and fair licensee, exhibit,
conduct complimentary tastings, or sell samples not to
exceed three, two-fluid ounce, tastings or samples per
patron, for consumption on the premises during the
operation of a festival or fair only; and may sell wine for
off-premises consumption only: Provided, That for licensed
wineries or farm wineries at a licensed festival or fair the
tastings, samples and off-premises sales shall occur under
the hours of operation as required in this article, except on
Sunday, tastings, samples, and off-premises sales are
unlawful between the hours of 2:00 a.m. and 10:00 a.m.

(4) A festival or fair license may be issued to a “wine
club” as defined in this subdivision for a license fee of $250.
The festival or fair committee or the governing body shall
designate a person to organize a club under a name which
includes the name of the festival or fair and the words “wine
club”. The license shall be issued in the name of the wine
club. A licensee may not commence the sale of wine as
provided in this subdivision until the wine club has at least
50 dues-paying members who have been enrolled, and to
whom membership cards have been issued. Thereafter, new
members may be enrolled and issued membership cards at
any time during the period for which the license is issued. A
wine club licensed under the provisions of this subdivision
may sell wine only to its members, and in portions not to
exceed eight ounces per serving. The sales shall take place
on premises or in an area cordoned or segregated so as to be
closed to the general public, and the general public shall not
be admitted to the premises or area. A wine club licensee
under the provisions of this subdivision may serve
complimentary samples of wine in moderate quantities for
tasting. A wine club may not make wine purchases from a
direct shipper where the wine may be consumed on the
licensed premises of any Class A private wine retail license
or private club. A wine club which violates the provisions
of this subdivision is subject to the penalties in this article.
(5) A licensed winery or farm winery approved to participate in a festival or fair under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed festival or fair, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: Provided, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: Provided, however, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, “professional baseball stadium” means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold.
at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur must be surrounded by a fence or other barrier prohibiting entry except upon the franchisee’s express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: Provided, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each professional baseball stadium may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: Provided, however, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: Provided, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume
wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of said wine off premises: Provided, however, That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at least $15: Provided further, That a licensed private wine restaurant or a private club may offer for sale, for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption off the premises. Such licensees are authorized to keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 et seq. of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose rules for promulgation in accordance with §29A-1-1 et seq. of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose rules for promulgation in accordance with the provisions of §29A-1-1 et seq. of this code to allow restaurants to serve wine with meals, and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.
(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any one consumer in one day. Persons serving the complimentary samples must be 21 years of age and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be registered with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve complimentary samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. “Auction or auctioning”, for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not such auction requires in-presence bidding or online internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11,
or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation and association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner’s approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed of three, two-fluid ounce tastings or samples per patron, for consumption on the premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided,* That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-day licensee’s submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections. No more than six licenses may be issued to any single licensee during any calendar year.

(q) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be
The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement the provisions of this subsection.

(r)(1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, “college stadium” means a facility constructed primarily for the use of a Division I, II, or III college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. These sales must take place within the confines of the college stadium: Provided, That the exterior of the area where wine sales may occur must be surrounded by a fence or other barrier prohibiting entry except upon the college or university’s express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: Provided, That the commissioner may by
rule or order grant certain waivers or exceptions to those
rules or orders as the circumstances of each the college
stadium may require, including, without limitation, the right
to revoke or immediately suspend any license issued
pursuant to this section prior to any notice or hearing
notwithstanding §60-8-27 and §60-8-28 of this code:
Provided, however, That §60-8-20(c) or §60-8-20(d) of this
code may not be waived, nor shall any exception be granted
concerning those subsections.

(3) The commissioner may propose rules for
promulgation in accordance with §29A-3-1 et seq. of this
code to implement this subsection.

§60-8-3a. Certain wine specialty shops operating as grocery
stores authorized to deliver wine curbside, mobile
applications, or web-based sales allowed; permits; fees.

A wine specialty shop which is licensed to sell wine off
premises and which operates a grocery store containing over
$100,000 of fresh produce and saleable food and food
products fit for human consumption in a combination of
displayed and stored inventory may apply for a Class B
license privilege granting the licensee the ability to
complete the sale of such wine in the original sealed
container for off-premises consumption to a person
purchasing wine ordered via a mobile application or web-
based software program and picking up the wine from the
licensee while in a vehicle:

(a) If the vehicle is parked in a licensed parking area
which is contiguous to the Class B licensee’s licensed
premises; or

(b) If the vehicle is parked in a licensed parking area
which is within 500 feet of the Class B licensee’s licensed
premises;

(c) The parking area referenced in subdivision (b) of this
section shall be designated by signage solely for the use of
persons who have previously ordered items, including, but
not limited to, wine using a mobile application or web-based software program;

(d) No wine may be loaded into a vehicle under this section unless the wine specialty shop or the licensee’s staff have verified that both the person placing the order and the person picking up the order, if different from the person placing the order, is 21 years of age or older and is not noticeably intoxicated;

(e) To operate under this section a wine specialty shop must be in good standing with the commissioner, apply, qualify, pay the Class B license privilege fee, and obtain the permit for the Class B licensee privilege for wine at a designated parking area. The Class B license privilege permit is nonrefundable and a nonprorated annual fee is $250;

(f) The licensee is subject to all requirements, penalties, and sanctions of this article.

§60-8-6b. Deliveries by licensed wine specialty shop.

(a) A wine specialty shop with a current active license and in good standing with the commissioner may apply for the additional license privilege of delivering wine with a gift basket, to the purchaser or other person designated by the purchaser, as provided in this section.

(b) The wine specialty shop:

(1) May only deliver in the county where the wine specialty shop is located with all sales and municipal taxes accounted for and paid, as long as such county is not a dry county or such county does not contain dry local option areas. The delivery of wine is not permitted in a dry county or the dry local option areas;

(2) Shall ensure that all wine delivered is sealed in the original container and is clearly and conspicuously labeled with the words “CONTAINS ALCOHOL: SIGNATURE
OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY”;

(3) Shall provide proof or records to the commissioner by filing monthly returns to the commissioner, on a form as prescribed by the commissioner, and the Tax Commissioner of all deliveries of wine which were purchased by and delivered to a person at least 21 years of age in the wine specialty shop’s county of operation;

(4) Shall only deliver wine with a gift basket to addresses within the State of West Virginia and within the requirements noted in this subsection;

(5) Shall not deliver in excess of two cases of wine with a gift basket per month to any person or address;

(6) Shall not deliver wine to any private club, private wine restaurant, private retailer, private wine bed and breakfast, or private wine spa; and

(7) May only deliver wine with a gift basket for personal use and not for resale to a person. The wine shall not be delivered and left at any address without verifying a person’s identification as required in this section.

(c) The nonprorated, nonrefundable fee for the additional wine specialty shop delivery license privilege is $250.

(d) The wine delivered by the authority of this section must be purchased in-person with a face-to-face transaction at the shop; may not be ordered or purchased by telephonic, electronic, or web-based wine ordering; and must be delivered by an officer or employee of the wine specialty shop licensee who is 21 years of age or older. Nonlicensed third parties may not deliver wine with a gift basket on behalf of a licensed wine specialty shop.

(e) Any vehicle delivering wine in a gift basket shall meet the permit requirements set forth in this chapter.
(f) The commissioner may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code to effectuate the purposes of this section.

§60-8-17. License issuance or refusal; terms of license.

(a) Upon receipt of the completed application, fee, and bond if required, the commissioner shall conduct any investigation he or she considers necessary to determine the accuracy of the matters contained in the completed application. For the purposes of conducting such investigation, the commissioner may withhold the granting or refusal to grant a license for a period not to exceed 30 days or until the applicant has completed the conditions set forth in §60-8-16 of this code. If it appears that the applicant is a suitable person, is located at a suitable premise, there is no false statement, no material misrepresentations, no hidden ownership, no persons with an undisclosed pecuniary interest contained in the application, and that the issuance of the license would not be in conflict with any of the provisions of this chapter, the commissioner shall issue the license. Otherwise the commissioner shall refuse to issue such license.

(b) The commissioner shall refuse the license of any applicant if he or she finds that such applicant is not a suitable person, that the place of business of such applicant is not a suitable place, or that such applicant has not complied with the provisions of this chapter. Upon refusal to issue such license, the commissioner shall enter an order refusing such application. The refusal is final unless a hearing is requested in accordance with the provisions of §60-8-18 of this code. When such refusal becomes final the commissioner shall immediately refund to the applicant his or her fees and bond accompanying the application.

(c) The license expires on June 30 next following the date it was issued and may be renewed upon the same showing as required for the issuance of the initial license,
together with the payment of fee and filing of any bond required by this article.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional $150 reactivation fee. The licensee must pay the applicable full-year annual license fee and the reactivation fee prior to the processing of any renewal application. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §11-16-23 of this code, as determined by the commissioner.

(e) Such license shall not be transferred to another person, but the location of the premises to which the license relates may be changed with the written consent of the commissioner, if the new location satisfies the requirements of this article upon an initial application and payment of a new application fee.
licensee floorplans; implementing a fee for the license; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; increasing allowable growler size to no larger than 128 ounces; providing for certain growler licensees to conduct complimentary samplings; providing a 30-day requirement to issue or deny a license application once the application is completed; implementing a $100 beer license operations fee and establishing a special revenue account; implementing a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; creating a one-day special license for certain nonprofit and tax exempt entities hosting artistic, athletic, charitable, educational, or religious events to purchase and sell nonintoxicating beer and nonintoxicating craft beer; allowing nonintoxicating beer and nonintoxicating craft beer to have a maximum alcohol content of 15 percent by volume and 11.9 percent by weight; providing limitations on special licenses; setting forth requirements for special licenses; providing for a Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a designated parking area; implementing a license fee; licensing brewers, resident brewers, and distributor representatives; providing for transportation permits for nonintoxicating beer and nonintoxicating craft beer; requiring nonintoxicating beer label registration; implementing an operational fee for licensed representatives, transportation permits, and container label registration; removing the bond requirements for brewers, resident brewers, distributors, and Class S licenses; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context
2 clearly requires differently:
(1) “Brand” means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled or otherwise produced, imported, or transshipped by a brewer or manufacturer, the labels of which have been registered and approved by the commissioner, that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

(2) “Brewer” or “manufacturer” means any person manufacturing, otherwise producing, importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this article. A brewer may obtain only one brewer’s license for its nonintoxicating beer or nonintoxicating craft beer.

(3) “Brewpub” means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises is designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

(4) “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

(5) “Class B retail license” means a retail license permitting the retail sale of liquor at a mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

(6) “Commissioner” means the West Virginia Alcohol Beverage Control Administration Commissioner.

(7) “Distributor” means and includes any person jobbing or distributing nonintoxicating beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state. For purposes of a distributor only, the term
“person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of §11-11-1 et seq. of this code notwithstanding the liability of trustees in §44D-10-1 et seq. of this code.

(8) “Franchise agreement” means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer’s nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the brewer’s assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.
(9) “Franchise distributor network” means the distributors who have entered into a binding written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may only have one franchise distributor network: Provided, That a brewer that has acquired the manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and be bound by the selling brewer’s separate franchise distributor’s network for any of its existing brands, line extensions, and new brands.

(10) “Freestanding liquor retail outlet” means a retail outlet that sells only liquor, wine, beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4 of this code.

(11) “Growler” means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not an open container under federal, state, and local law. A growler with a broken seal is an open container under federal, state, and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant seal, security tape, or other material, as approved by the commissioner, placed on or over the growler’s opening, which seal, security tape or other material is clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler.
(12) “Line extension” means any nonintoxicating beer product that is an extension of brand or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or otherwise related to a brewer’s existing brand through the use of a brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities. In determining whether a nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited to, the following factors: Name or partial name; trade name or partial trade name; logos; copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

(13) “Nonintoxicating beer” means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by weight, or 15 percent alcohol by volume, whichever is greater. The word “liquor” as used in chapter 60 of this code does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this definition.

(14) “Nonintoxicating beer floor plan extension” means a temporary one-day extension of an existing Class A licensee’s floor plan to a contiguous, adjoining and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee’s licensed premises; further such license shall be endorsed or approved by the county or municipality where the license is located; such license shall be in good standing with the commissioner, and further such temporary event shall cease
on or before midnight of the approved temporary one-day event.

(15) "Nonintoxicating beer sampling event" means an event approved by the commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized pursuant to §11-16-11a of this code.

(16) "Nonintoxicating beer sampling day" means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

(17) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops, or any other similar product or substitute and containing not less than one half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

(18) "Original container" means the container used by a resident brewer or brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating craft beer for sale at wholesale.

(19) "Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

(20) "Private club" means a license issued pursuant to §60-7-1 et seq. of this code.

(21) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia and which does not brew or manufacture more than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer.
annually, and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually.

(22) “Retailer” means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, malt coolers at his or her established and licensed place of business.

(23) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or the commissioner’s designee.

§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

No person shall manufacture, tender, sell, possess for sale, transport, or distribute nonintoxicating beer except in accordance with the provisions of this article, and after first obtaining a state license therefor, as provided in this article.

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

(a) Legislative findings. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or resident brewer with its principal place of business and manufacture located in this state to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state’s growing brewing industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.
(b) Sales of nonintoxicating beer. — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may offer only nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for retail sale to customers from the brewer’s or resident brewer’s licensed premises for consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give or furnish nonintoxicating beer for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section.

(c) Complimentary samples. — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer’s or resident brewer’s principal place of business and manufacture located in the State of West Virginia. The complimentary samples may be no greater than two ounces per sample per patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per day. A licensed brewer or resident brewer providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated.

(d) Retail sales. — Every licensed brewer or resident brewer under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable requirements and penalties in this article.
(e) Payment of taxes and fees. — A licensed brewer or resident brewer under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) Advertising. — A licensed brewer or resident brewer under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(g) Growler requirements. — A licensed brewer or resident brewer under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section may refill a growler subject to the requirements of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

(h) Growler labeling. — A licensed brewer or resident brewer under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the
nonintoxicating beer or nonintoxicating craft beer in the
growler and the date the growler was filled or refilled, and,
further, all labeling on the growler shall be consistent with
all federal labeling and warning requirements.

(i) Growler sanitation. — A licensed brewer or resident
brewer authorized under this section shall clean and sanitize
all growlers he or she fills or refills in accordance with all
state and county health requirements prior to its sealing. In
addition, the licensed brewer or resident brewer shall
sanitize, in accordance with all state and county health
requirements, all taps, tap lines, pipe lines, barrel tubes and
any other related equipment used to fill or refill growlers.
Failure to comply with this subsection may result in
penalties under §11-16-23 of this code.

(j) Fee. — There is no additional fee for a licensed
brewer or resident brewer authorized under this section to
sell growlers.

(k) Limitations on licensees. — To be authorized under
this section, a licensed brewer or resident brewer may not
produce more than 25,000 barrels per calendar year at the
brewer’s or resident brewer’s principal place of business
and manufacture located in the State of West Virginia. No
more than one brewer or resident brewer license may be
issued to a single person or entity and no person may hold
both a brewer and a resident brewer license. A licensed
brewer or resident brewer under this section may only
conduct tours, give complimentary samples and sell
growlers during the hours of operation set forth in §11-16-
18(a)(1) of this code. A licensed brewer or resident brewer
authorized under this section shall be subject to the
applicable penalties under §11-16-23 of this code for
violations of this section.

(l) Rules. — The commissioner, in consultation with the
Bureau for Public Health concerning sanitation, is
authorized to propose rules for legislative approval,
§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, and Class B retail licensee’s authority to sell growlers.

(a) Legislative findings. — The Legislature hereby finds that it is in the public interest to regulate, control and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state’s growing brewing industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.

(b) Sales of nonintoxicating beer. — A licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for consumption off
of the licensed premises and meets the requirements set out in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

(c) Retail sales. — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable requirements and penalties in this article.

(d) Payment of taxes and fees. — A licensee authorized under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) Advertising. — A licensee authorized under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(f) Growler requirements. — A licensee authorized under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensee authorized under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A licensee authorized under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer for personal consumption off of the licensed premises and not for resale. A licensee under this section may refill a growler subject to the requirements of this section. A licensee shall visually inspect any growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.
(g) Growler labeling. — A licensee authorized under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler, and the date the growler was filled or refilled, and, further, all labeling on the growler shall be consistent with all federal labeling and warning requirements.

(h) Growler sanitation. — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(i) Fees. — Commencing July 1, 2015, and every July 1 thereafter, there is an annual $100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided by this section. The licensee must be in good standing with the state at the time of paying the fee.

(j) Complimentary samples. — A licensee authorized under this section may provide complimentary samples which may be no greater than one ounce per sample and a sampling shall not exceed three different nonintoxicating beer or nonintoxicating craft beer complimentary one-ounce samples per patron per day. A licensee authorized under this section providing complimentary samples shall prior to any sampling verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated. All nonintoxicating beer and nonintoxicating craft beer utilized for sampling purposes must be purchased from the licensee’s inventory.
(k) Limitations on licensees. — A licensee under this section may only sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. Any licensee licensed under this section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating craft beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed under this section shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) Nonapplicability of certain statutes. — Notwithstanding any other provision of this code to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a growler or providing complimentary samples as provided in this section. Any unauthorized sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the licensee’s licensed premises is subject to penalties under this article.

(m) Rules. — The commissioner is authorized to propose rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§11-16-6c. Class B retail dealer which is a grocery store, mobile application, or web-based sales privilege permit; fee.

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer and who operates a grocery store containing over $100,000 of fresh produce and saleable food and food products fit for human consumption in a combination of displayed and stored inventory may apply for a Class B license privilege granting the licensee the ability to complete the sale of such nonintoxicating beer or nonintoxicating craft beer in the original sealed container for off-premises consumption to a person purchasing the nonintoxicating beer or nonintoxicating craft beer from a vehicle:
(1) If the vehicle is parked in a licensed parking area which is contiguous to the Class B licensee’s licensed premises; or

(2) If the vehicle is parked in a licensed parking area which is within 500 feet of the Class B licensee.

(b) The parking area referenced in subsection (a) of this section shall be designated by signage solely for the use of persons who have previously ordered items including, but not limited to, nonintoxicating beer or nonintoxicating craft beer using a mobile application or web-based software program.

(c) No nonintoxicating beer or nonintoxicating craft beer may be loaded into a vehicle under this section unless the Class B licensee or such licensee’s staff have verified that both the person placing the order, and, if different from the person placing the order, the person picking up the order are 21 years of age or older and not noticeably intoxicated; and

(d) To operate under this section, a Class B retail dealer licensee must be in good standing with the commissioner, apply, qualify, pay the Class B license privilege fee and obtain the permit for the Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a designated parking area. The Class B license privilege permit nonrefundable and non-prorated annual fee is $250. For purposes of criminal enforcement of the provisions of this article, persons placing orders and picking up orders are deemed to be purchasers.

(e) The licensee shall be subject to all requirements, penalties and sanctions of this article.

§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a
license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years preceding the date of the application and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers for a period of two years preceding the date of such application. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license, shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application. If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e), of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust must state that such beneficiary’s interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of such beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust
and state under oath his or her name, address, Social Security number and birth date;

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application must state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary or other persons in active control of the activities of the trust relating to the license is a citizen of the United States, and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application. The requirements as to residence do not apply to the officers of a corporation applying for a retailer’s license but the officers, agent, or employee who manages and is in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer’s license including the requirement as to residence;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;

(5) That the place or building in which is proposed to do business conforms to all applicable laws of health, fire and zoning regulations and is a safe and proper place or building
not within 300 feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating a proposed business in a place or building within 300 feet of a school does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within 300 feet of the college or university;

(6) That the applicant is not incarcerated and has not during the five years preceding the date of said application been convicted of a felony;

(7) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in 29B-1-1 et seq. of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance and, if any applicant fails to qualify, the license shall be
refused. In addition to the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, must be submitted with all true and correct information. For the purpose of conducting such independent investigation, the commissioner may withhold the granting or refusal to grant such license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it shall appear that such applicant meets the requirements in the code and the rules, including, but not limited to, being a suitable person of good reputation and morals; having made no false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in such application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place or is within 300 feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating any such place within 300 feet of a school does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within 300 feet; or
(3) That the license should not be issued for reason of conduct declared to be unlawful by this article.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

(a) All retail dealers, distributors, brewpubs, brewers and resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active license as required by this article. The license period begins on July 1 of each year and ends on June 30 of the following year. If the license is granted for a shorter period, then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year: Provided, That if a licensee fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, then an additional $150 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or refunded, prior to the processing of any renewal application and applicable full year annual license fee; and furthermore a licensee who continues to operate upon the expiration of its license is subject to all fines, penalties and sanctions available in §11-16-23 of this code, all as determined by the commissioner.

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes: Class A and Class B.

(A) For a Class A retail dealer, the license fee is $150 for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, is $150: Provided, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax
of $10 for each dining, club or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.

(B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and unchilled beer, is $150 for each place of business. A Class B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption.

A Class B license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article, the term “grocery store” means any retail establishment commonly known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises. Caterers or party supply stores are required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(2) For a distributor, the license fee is $1,000 for each place of business.

(3) For a brewer or a resident brewer with its principal place of business or manufacture located in this state and who produces:
(A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating craft beer, the license fee is $500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is $1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is $1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is $1,500. The brewer is exempt from the requirements set out in subsections (c), (d) and (e) of this section: Provided, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d) and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements.

(5) For a brewpub, the license fee is $500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer’s license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year based upon the production capacity of the brewer’s or resident brewer’s manufacturing facilities, and the prior year’s production and
(d) On or before July 15 of each year, every brewer or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer’s or resident brewer’s estimate that was filed with the application or renewal for a brewer’s or resident brewer’s license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is $100, and the fee may not be prorated or refunded, and must be accompanied with a license application, certification that the event meets certain requirements in the code and rules, and such other information as the commissioner may reasonably require, at least 15 days prior to the event, all as determined by the commissioner.

§11-16-10. Brewer’s license for foreign corporation; application; bond; contents of application; limitations; licensed representatives for brewers, resident brewers, and distributors; annual license fee; renewal; suspension;
license fee for sales representatives; transportation permits; container label registration; and Beer License Operations Fund created; and implementation operations of fee.

(a) A brewer’s license shall be issued by the commissioner to a foreign corporation which submits an application therefor accompanied by the license fee hereinafter prescribed, a certified copy of the certificate of authority issued by the Secretary of State authorizing such foreign corporation to transact business in the state, and a certified copy of its most recent corporation charter. Such application shall be verified and shall state:

(1) The name of the corporation and the state under the laws of which it is incorporated;

(2) The date of incorporation;

(3) The address of the principal office of the corporation;

(4) The names and respective addresses of the directors and officers of the corporation;

(5) The date that such foreign corporation qualified to transact business in this state; and

(6) Such other information as the commissioner, by rule or regulation, may require.

(b) So long as the foreign corporation remains qualified to transact business in this state so that the Secretary of State can accept service of notice and process for such foreign corporation, then, notwithstanding any other provision of this article to the contrary, none of the officers and directors of such foreign corporation need be residents of this state.

(c) The license fee for a brewer’s license for a foreign corporation selling any nonintoxicating beer product within this state, whether or not its principal place of business be
located in this state, shall be $1,500 per annum. The license period shall begin on July 1 of each year and end on June 30 of the following year, and if granted for a lesser period, the same shall be prorated semiannually in proportion to the remainder of the fiscal year.

(d) As of July 1, 2019, there is an annual nonrefundable and non-prorated operational fee for all brewers, resident brewers, Class A retail dealers, Class B retail dealers, and distributors of $100 which shall be paid on or before July 1, 2019 and every July 1 thereafter. All fees collected by the commissioner pursuant to this subsection shall be deposited in a special revenue account in the State Treasury, hereby created, to be known as the Beer License Operations Fund. Moneys in the fund may only be expended by the commissioner for the administration of this article, and as appropriated by law.

(e) All representatives engaged in the selling, marketing, merchandising, or the conducting of any other sales on behalf of any brewer, resident brewer or distributor of nonintoxicating beer shall be issued a license by the commissioner. A licensee is subject to the provisions of §11-16-23 of this code for violations of this article and the rules promulgated thereunder. It is a violation of the code and rules to operate without such license and is punishable by the penalties available under this article. The commissioner shall prescribe forms to complete such licensure.

(f) Any brewer, resident brewer, distributor or any person transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state on behalf of such licensees or persons, or by contract or other means, who is operating in this state may only transport nonintoxicating beer or nonintoxicating craft beer available for resale, and not personal use, in or through this state. All vehicles transporting nonintoxicating beer or nonintoxicating craft beer shall be issued a nonintoxicating beer transportation permit. Transporting nonintoxicating
beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state without a nonintoxicating beer transportation permit is in violation of law and the penalties prescribed under §11-16-18 and §11-16-23 of this code are applicable for any violation. The commissioner shall prescribe forms to complete such permitting.

(g) Any brewer or resident brewer offering nonintoxicating beer or nonintoxicating craft beer for sale under this article shall register, prior to offering such beer for sale in the state, with the commissioner each nonintoxicating beer or nonintoxicating craft beer container label. No nonintoxicating beer or nonintoxicating craft beer brand may be sold under this article unless all of such nonintoxicating beer or nonintoxicating craft beer brand’s container labels for the product intended for sale in the state have been registered and reviewed by the commissioner. Prior to registration of any nonintoxicating beer or nonintoxicating craft beer container labels, this review shall include, but not be limited to, a review of the alcohol content, corporate or product information, marketing and advertising so that the nonintoxicating beer or nonintoxicating craft beer container label is not intended to be marketed to persons less than 21 years of age. The commissioner shall remove all nonrenewed nonintoxicating beer or nonintoxicating craft beer container labels, and any licensee who sells nonintoxicating beer or nonintoxicating craft beer with nonrenewed container labels shall be subject to the penalties under §11-16-23 of this code. Failure to register, obtain a review, and a certification for a nonintoxicating beer or nonintoxicating craft beer container label and failure to register such labels will subject the brewer or resident brewer to penalties under said section. The commissioner shall prescribe forms to complete such registration.

(h) The licenses and permits issued under the provisions of this section shall be renewed annually upon application
for renewal on a form prescribed by the commissioner and payment of the annual license fee.

(i) If at any time a foreign corporation is no longer qualified to transact business in this state, the Secretary of State shall notify the commissioner of such fact and the commissioner shall thereupon suspend the brewer’s license issued to such foreign corporation until such time as such foreign corporation has again qualified to transact business in this state and has otherwise complied with the provisions of this section.

(j) Notwithstanding any other provision of this article to the contrary, any corporation issued a brewer’s license under the provisions of this article shall not engage in the business of a distributor or retailer as defined in this article.

§11-16-11b. Special license for one-day charitable events; application; license subject to provisions of article; exception.

(1) The commissioner may issue a special one-day license to be designated a Class S1 license for the retail sale of nonintoxicating beer and nonintoxicating craft beer to a duly-organized nonprofit corporation, limited liability entity, or an association having received federal tax exempt status allowing the sale and serving of nonintoxicating beer or nonintoxicating craft beer when raising money for artistic, athletic, charitable, educational, or religious purposes. The commissioner may not charge a fee to the applicant that meets requirements for licensure. The special license shall be issued for a term no longer than one day. No more than six licenses may be issued to any single licensee during any calendar year. The license application shall contain a copy of the documents showing approved federal tax-exempt status and other information required by the commissioner and shall be submitted to the commissioner at least 15 days prior to the event. Nonintoxicating beer served and sold during the event shall be purchased from a licensed distributor or resident brewer, acting in the limited
capacity of a distributor for its own products, that services the location where the festival, fair, or other event is occurring. All distributors and resident brewers in the area must be notified in writing by mail, facsimile or electronic mail of the event in advance and be presented with the opportunity to participate in the event. Licensed representatives of distributors, brewers, or resident brewers may attend the one-day event and discuss their products, but may not engage in the serving or selling of the nonintoxicating beer or nonintoxicating craft beer. A licensee licensed by this section may use bona fide employees or volunteers of the charitable entity to sell and serve nonintoxicating beer and nonintoxicating craft beer.

(2) A license issued under the provisions of this section and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: Provided, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each event requires, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of §11-16-24 of this code: Provided, however, That under no circumstances may the provisions §11-16-18(a)(1), §11-16-18(a)(2), or §11-16-18(a)(3) of this code, be waived or an exception granted with respect to those provisions.

§11-16-12. When bond not required; bond of a Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.

(a) There shall be no bond for a brewer, resident brewer, distributor, Class S brewpub license, as the license privilege itself secures the payment of taxes and is subject to suspension and revocation for failure to pay said taxes.

(b) Each Class A retail dealer, in addition to furnishing the information required by this article, shall furnish, as
prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the State of West Virginia, in the amount not less than $500 nor more than $1,000 within the discretion of the commissioner. All such bonds shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the State of West Virginia generally relating to the distribution, sale and dispensing of nonintoxicating beer and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the State Fund, General Revenue.

(c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the prosecuting attorney of the county wherein such retail dealer’s place of business is located, or the prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate proceedings for the collection of the full amount of said bond. Upon request of such prosecuting attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefor by the prosecuting attorney to perform said duty hereby imposed shall subject him or her to removal from office by the circuit court of the county for which said prosecuting attorney was elected upon proper proceedings and proof in the manner provided by law.

§11-16-17a. Commissioner to investigate, review, and approve or deny franchise agreements, labels, brands, and line extensions.

(a) The commissioner shall investigate and review:
(1) All franchise agreements and any amendments to a franchise agreement to verify compliance with this article and the promulgated rules.

(2) The registration of all container labels for brands manufactured, imported or sold in West Virginia, as further specified in §11-16-10(g) of this code.

(3) The registration of all brands and line extensions with the commissioner that are the subject of a franchise agreement or an amendment to a franchise agreement.

(4) The appointment of all brands or line extensions to a distributor in a brewer’s established franchise distributor network and to that distributor’s assigned territory from the brewer.

(5) The appointment of all brands or line extensions acquired by a brewer as either an acquiring brewer, successor brewer and also any successor entities of a brewer, as specified in §11-16-21(a)(3) of this code, to the distributor in the selling brewer’s established franchise distributor network and to that distributor’s assigned territory.

(b) The commissioner’s investigation and review under subsection (a) of this section may include, but is not limited to: the brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, associated entities or any other related entities, the brewer’s corporate structure, the nature of the relatedness of various entities, ownership, trade names or partial trade names, logos, copyrights, trademarks or trade design, product codes, marketing and advertising, promotion or pricing.

(c) The commissioner may approve or deny any item listed in subsection (a) of this section as determined by the commissioner in accordance with this article, the promulgated rules as the facts and circumstances dictate.
(d) Any brewer adversely affected by a denial as specified in subdivision (3) or (4), subsection (a) of this section, may request, in writing, a final written determination from the commissioner.

(e) Upon receipt of final determination as provided in subsection (d) of this section, a brewer may request an administrative hearing by filing a written petition and as otherwise required per §11-16-24 of this code and the rules promulgated by the commissioner. Upon filing a written petition, the brewer shall file a $1,000 hearing deposit, via certified check or money order, to cover the costs of the hearing. Such certified check or money order shall be made payable to the commissioner. In any such hearing held by the request of a brewer, the burden of proof is on the brewer and the standard of review for the administrative hearing is by a preponderance of the evidence.

CHAPTER 17

(Com. Sub. for S. B. 561 - By Senators Trump, Takubo and Boso)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-18 of said code; to amend said code by adding thereto two new sections, designated §60-2-17a and §60-2-17b; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto two new sections, designated §60-7-6a and §60-7-8a; to amend and reenact §60-8-34 of said code; and to amend and reenact §61-8-27 of said code, all relating to alcoholic
beverages generally; creating a county option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 10:00 a.m. on Sundays in lieu of a county option election to permit such sales; delineating hours of unlawful sale on a Sunday generally; permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement; limiting the jurisdiction of such requested law-enforcement assistance; implementing a $100 operations fee and establishing special revenue account and fund; clarifying that consumption of alcoholic liquors in public is unlawful; clarifying that West Virginia licensees can only sell liquor by the drink with certain exceptions; clarifying prohibition on liquor bottle sales in Class A licenses; providing for a bottle service fee and establishing requirements for bottle service; clarifying certain licensing requirements for licensure; providing guidance on certain lawful conduct such as wine bottle sales and frozen drink machines; forbidding the operation of certain bring your own bottle establishments; creating a private fair and festival license; definitions; license requirements; license fee; creating the private hotel license and license fee; creating a private nine-hole golf course license and fee; removing the need for golf carts to be offered at licensed golf courses; definitions; license requirements; license fee; permitting a private resort hotel to have inner-connection with a resident brewer who has a brewpub; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees who fail to timely file their renewal application and pay their annual license fees; permitting a license privilege for certain licensees to operate a connected but separately operated Class A on-premises license and a Class B off-premises license; clarifying that certain state-licensed gaming is permissible in a private club; clarifying permitted hours of operation for certain licensees; clarifying unlawful Sunday sales for certain wine licensees; and permitting minors to attend a private hotel, private nine-hole golf course, and a private fair or festival under certain conditions.

Be it enacted by the Legislature of West Virginia:
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 10:00 a.m. on Sundays.

Beginning July 1, 2019, the county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine, or alcoholic liquors in or on a licensed premises shall be allowed in the county beginning 1:00 p.m. on any Sunday, as provided in §11-16-18 of this code, §60-7-12 of this code, §60-8-34 of this code upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of §60-59-3 of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the 14 consecutive days next preceding the election. On the local option election ballot shall be printed the following: “Shall the beginning hour at which nonintoxicating beer, wine, and alcoholic liquor be sold or dispensed for licensed on-premises consumption only in ________ County on Sundays be changed from 10:00 a.m. to 1:00 p.m.

If approved by the voters this would forbid private clubs and restaurants licensed to sell and dispense nonintoxicating beer, wine, and alcoholic liquor; licensed private wine restaurants, private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on-premises consumption until 1:00 p.m.
(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked “Yes”, all applicable licensees shall be forbidden to sell and dispense beer, wine, or alcoholic liquors until 1:00 p.m. on Sundays. In the event a majority of the votes are marked “No”, all applicable licensees will continue to be required to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 10:00 a.m., or a Class A retail dealer who sells nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday, except in private clubs licensed under the provisions of §60-7-1 et seq. of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person
18 visibly or noticeably intoxicated or to any person known to
19 be insane or known to be a habitual drunkard;

20 (3) For any licensee, his, her, its or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than 21 years of age;

21 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained in this section prohibits a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: Provided, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

22 (5) For any brewer or distributor or brew-pub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

23 (6) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained in this section prohibits a brewer
from sponsoring any professional or amateur athletic event
or from providing prizes or awards for participants and
winners in any events: Provided, however, That no event
shall be sponsored which permits actual participation by
athletes or other persons who are minors, unless specifically
authorized by the commissioner;

(7) For any licensee to permit in his or her premises any
lewd, immoral or improper entertainment, conduct, or
practice;

(8) For any licensee except the holder of a license to
operate a private club issued under the provisions of §60-7-1
et seq. of this code or a holder of a license or a private
wine restaurant issued under the provisions of §60-8-1 et
seq. of this code to possess a federal license, tax receipt or
other permit entitling, authorizing, or allowing the licensee
to sell liquor or alcoholic drinks other than nonintoxicating
beer;

(9) For any licensee to obstruct the view of the interior
of his or her premises by enclosure, lattice, drapes, or any
means which would prevent plain view of the patrons
occupying the premises. The interior of all licensed
premises shall be adequately lighted at all times: Provided,
That provisions of this subdivision do not apply to the
premises of a Class B retailer, the premises of a private club
licensed under the provisions of §60-7-1 et seq. of this code,
or the premises of a private wine restaurant licensed under
the provisions of §60-8-1 et seq. of this code;

(10) For any licensee to manufacture, import, sell, trade,
barter, possess, or acquiesce in the sale, possession, or
consumption of any alcoholic liquors on the premises
covered by a license or on premises directly or indirectly
used in connection with it: Provided, That the prohibition
contained in this subdivision with respect to the selling or
possessing or to the acquiescence in the sale, possession, or
consumption of alcoholic liquors is not applicable with
respect to the holder of a license to operate a private club
issued under the provisions of §60-7-1 et seq. of this code
nor shall the prohibition be applicable to a private wine
restaurant licensed under the provisions of §60-8-1 et seq.
of this code insofar as the private wine restaurant is
authorized to serve wine;

(11) For any retail licensee to sell or dispense
nonintoxicating beer, as defined in this article, purchased,
or acquired from any source other than a distributor, brewer,
or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous, or
disorderly conduct of any kind upon his or her premises or
to permit the use of loud musical instruments if either or any
of the same may disturb the peace and quietude of the
community where the business is located: Provided, That a
licensee may have speaker systems for outside broadcasting
so long as the noise levels do not create a public nuisance or
violate local noise ordinances;

(13) For any person whose license has been revoked, as
provided in this article, to obtain employment with any
retailer within the period of one year from the date of the
revocation, or for any retailer to knowingly employ that
person within the specified time;

(14) For any distributor to sell, possess for sale,
transport, or distribute nonintoxicating beer except in the
original container;

(15) For any licensee to knowingly permit any act to be
done upon the licensed premises, the commission of which
constitutes a crime under the laws of this state;

(16) For any Class B retailer to permit the consumption
of nonintoxicating beer upon his or her licensed premises;

(17) For any Class A licensee, his, her, its or their
servants, agents, or employees, or for any licensee by or
through any servants, agents, or employees, to allow, suffer,
or permit any person less than 18 years of age to loiter in or
upon any licensed premises; except, however, that the
provisions of this subdivision do not apply where a person
under the age of 18 years is in or upon the premises in the
immediate company of his or her parent or parents, or where
and while a person under the age of 18 years is in or upon
the premises for the purpose of and actually making a lawful
purchase of any items or commodities therein sold, or for
the purchase of and actually receiving any lawful service
therein rendered, including the consumption of any item of
food, drink or soft drink therein lawfully prepared and
served or sold for consumption on the premises;

(18) For any distributor to sell, offer for sale, distribute,
or deliver any nonintoxicating beer outside the territory
assigned to any distributor by the brewer or manufacturer of
nonintoxicating beer or to sell, offer for sale, distribute, or
deliver nonintoxicating beer to any retailer whose principal
place of business or licensed premises is within the assigned
territory of another distributor of such nonintoxicating beer:
Provided, That nothing in this section is considered to
prohibit sales of convenience between distributors licensed
in this state where one distributor sells, transfers, or delivers
to another distributor a particular brand or brands for sale at
wholesale; and

(19) For any licensee or any agent, servant, or employee
of any licensee to knowingly violate any rule lawfully
promulgated by the commissioner in accordance with the
provisions of chapter 29A of this code.

(b) Any person who violates any provision of this article
including, but not limited to, any provision of this section,
or any rule, or order lawfully promulgated by the
commissioner, or who makes any false statement
concerning any material fact in submitting application for
license or for a renewal of a license or in any hearing
concerning the revocation thereof, or who commits any of
the acts herein declared to be unlawful is guilty of a
misdemeanor and, upon conviction thereof, shall be
punished for each offense by a fine of not less than $25, nor
more than $500, or confined in the county or regional jail for not less than 30 days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer to an individual who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent, servant, or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away; (B) that it has communicated this
policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) “Transaction scan” means the process by which a person checks, by means of a transaction scan device, the age, and identity of the cardholder, and “transaction scan device” means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver’s license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in the licensee’s lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age but at least 16 years of age: Provided, That the person’s duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee’s license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.
§60-2-17a. Law enforcement cooperation.

In addition to the assistance of law enforcement provided under §15-2-12 of this code, the commissioner may obtain assistance in the enforcement of §11-16-1 et seq. and §60-1-1 et seq. of this code from county or municipal law-enforcement agencies by making a written request therefor. The assistance authorized by this section is limited only to accompanying the commissioner and his or her agents and may not be unreasonably withheld. Any law-enforcement officer acting pursuant to this section may further act upon crimes committed in his or her presence: Provided, That any officer so acting must be within his or her geographic jurisdiction, and nothing in this section authorizes any officer to act outside of the scope of his or her geographic jurisdiction.

§60-2-17b. Wine and liquor operating fund established; operations fee; fund issues.

(a) As of July 1, 2019, there is an annual nonrefundable and nonprorated operational fee of $100 for all distilleries, mini-distilleries, wineries, farm wineries, Class A retail licensees, Class B retail licensees, private clubs, private wine retailers, wine specialty shops, wine restaurants, private wine spas, private wine bed and breakfasts, wine suppliers, and wine distributors which shall be paid on or before July 1, 2019, and every July 1 thereafter. All fees collected by the commissioner pursuant to this section shall be deposited in a special revenue account in the State Treasury, hereby created, to be known as the Wine and Liquor Operations Fund. Moneys in the fund may only be expended by the commissioner for the administration of this chapter, as appropriated by law.

(b) Licensees holding multiple licenses for nonintoxicating beer, nonintoxicating craft beer, wine, or liquor shall be subject to paying only one operations fee of $100 under this chapter and under §11-16-10(d) of this code.
ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

A person shall not:

1. Manufacture or sell in this state without a license any alcoholic liquor, except as permitted by this article;

2. Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by this article;

3. Sell or tender without a license any alcoholic liquor other than permitted by this article;

4. Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

5. Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this state;

6. Advertise any alcoholic liquor in this state except in accordance with the rules and regulations of the commissioner; or

7. Distribute, deal in, process, or use crowns, stamps, or seals required under the authority of this chapter, except in accordance with the rules and regulations prescribed by the commissioner; or

8. Manufacture or sell, aid or abet in the manufacture or sale, possess, transport or ship, use, or in any other manner provide or furnish powdered alcohol.

A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 nor more than $500, or confined in jail not less than 30 days nor more than one year or both such fine and imprisonment, for the first offense. Upon
conviction of a second or subsequent offense, the court may in its discretion impose a penalty of confinement in the penitentiary for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

An indictment for any first violation of subdivisions (1), (2), and (3) of this section, or any of them, shall be sufficient if in form or effect as follows:

State of West Virginia

County of ........................., to wit:

The Grand Jurors of the State of West Virginia, in and for the body of the County of .........., upon their oaths present that .............., on the ...... day of ....... 20...., in the said County of .........., did unlawfully, without a State license and without authorization under the Alcohol Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a quantity of alcoholic liquor, against the peace and dignity of the state.

Any indictment under this section shall otherwise be in conformity with §62-9-1 et seq. of this code.

§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which such license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as
required in the manufacture thereof under regulations of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this code;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by his or her license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors’ original container: Provided, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1 et seq. of this code, that is in good standing with the commissioner and has paid a $1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by such a private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club’s cost, and no such liquor bottle shall be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 et seq. of this code may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless such licensee has obtained a license or privilege authorizing other activity;

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: Provided, That a licensee may sell, furnish, tender, and serve pre-mixed beverages consisting of alcoholic liquors, nonalcoholic mixer, and ice if:

(A) The frozen drink mixing machine is emptied and sanitized daily; and
(B) That a written record reflecting the cleaning and sanitizing of the frozen drink machine is maintained for inspection by the commissioner and health inspectors;

(8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

(9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

(10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 nor more than $500 or confined in jail not less than 30 days nor more than one year, or both such fine and confinement for the first offense. Upon conviction of a second or subsequent offense, the court may in its discretion impose a penalty of confinement in a state correctional facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person may not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Tender a drink of alcoholic liquor to another person in a public place;
(4) Operate a business without a license issued under §60-1-1 et seq. of this code which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice, and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing, or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a “bring your own bottle”, “bring your own booze”, or “BYOB” establishments;

(5) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the commissioner therefor; or

(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1), subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of a citation, transport the individual to the individual’s present residence, or arrange for the transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-enforcement officer’s
judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

(1) If the individual is no longer incapacitated, he or she may be released;

(2) If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or

(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through
(6), subsection (a) of this section: *Provided, That the law-
enforcement officer may use reasonable force to prevent
harm to himself or herself, the individual arrested, or others
in carrying out the provisions of this section.*

(e) Any person who violates subdivision (1), subsection
(a) of this section is guilty of a misdemeanor and, upon
conviction thereof, shall be sentenced by a judicial officer
in accordance with the following options:

(1) Upon first offense, a fine of not less than $5 nor more
than $100. If the individual, prior, to conviction, agrees to
voluntarily attend an alcohol education program of not more
than six hours duration at the nearest community mental
health — mental retardation center, the judicial officer may
delay sentencing until the program is completed and upon
completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not
less than $5 nor more than $100 and not more than 60 days
in jail or completion of not less than five hours of
alcoholism counseling at the nearest community mental
health — mental retardation center;

(3) Upon third and subsequent convictions, a fine of not
less than $5 nor more than $100 and not less than five nor
more than 60 days in jail or a fine of not less than $5 nor
more than $100 and completion of not less than five hours
of alcoholism counseling at the nearest community mental
health — mental retardation center: *Provided, That three
convictions for public intoxication within the preceding six
months is considered evidence of alcoholism. For the
educational counseling programs described in this
subsection the community mental health — mental
retardation center may charge each participant its usual and
customary fee and shall certify in writing to the referring
judicial officer the completion or failure to complete the
prescribed program for each individual.*
(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100; and upon a second or subsequent conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than $100 nor more than $500; and upon conviction of second or subsequent offense, he or she is guilty of a felony and, shall be confined in a state correctional facility for a period of not less than one year nor more than three years.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; power to lease building for establishment of private club.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) “Applicant” means a private club applying for a license under the provisions of this article.

(b) “Code” means the official Code of West Virginia, 1931, as amended.
(c) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.

(d) “Licensee” means the holder of a license to operate a private club granted under this article, which license shall remain unexpired, unsuspended, and unrevoked.

(e) “Private club” means any corporation or unincorporated association which either: (1) Belongs to or is affiliated with a nationally recognized fraternal or veterans’ organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (2) is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (3) is organized and operated for legitimate purposes which has at least 100 duly elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues-paying members in good standing.
of the corporation or association and their guests while in
the company of a member and to which club the general
public is not admitted, and which club maintains in the
building or on the premises a suitable kitchen and dining
facility with related equipment and employs a sufficient
number of persons for serving meals to members and their
guests; or (4) is organized for legitimate purposes and owns
or leases a building or other delimited premises in any state,
county or municipal park or at any airport, in which building
or premises a club has been established, to which club are
admitted only duly elected and approved dues-paying
members in good standing and their guests while in the
company of a member and to which club the general public
is not admitted, and which maintains in connection with the
club a suitable kitchen and dining facility and related
equipment and employs a sufficient number of persons for
serving meals in the club to the members and their guests.

(f) “Private fair and festival” means an applicant for a
private club or a licensed private club meeting the
requirements of §60-7-8a of this code for a temporary event,
and the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Has been sponsored, endorsed, or approved, in
writing, by the governing body (or its duly elected or
appointed officers) of either the municipality or of the
county wherein the festival, fair, or other event is to be
conducted;

(3) Shall prepare, provide, or engage a food caterer to
provide adequate freshly prepared food or meals to serve its
stated members and guests who will be attending the
temporary festival, fair, or other event, and further shall
provide any documentation or agreements of such to the
commissioner prior to approval;
(4) Shall not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors (liquor and wine), nonintoxicating beer, or nonintoxicating craft beer;

(5) Shall provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(6) Shall provide a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event; and

(7) Utilizes an age verification system approved by the commissioner.

(g) “Private hotel” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 2,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(4) Maintains, at any one time, $2,500 of fresh food inventory capable of being prepared in the private hotel’s full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres,
which are contiguous acres of bounded or fenced real property which would be listed on the licensee’s floorplan and would be used for hotel and conferences and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists in the application referenced in subdivision (5) of this subsection the entire property and all adjoining buildings and structures on the private hotel’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel’s licensed premises and as noted on the private hotel’s floorplan;

(7) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises; and

(8) Utilizes an age verification system approved by the commissioner.

(h) “Private resort hotel” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 5,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;
(4) Maintains, at any one time, $5,000 of fresh food inventory capable of being prepared in the private resort hotel’s full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee’s floorplan and would be used for destination, resort, and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private resort hotel’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel’s licensed premises and as noted on the private resort hotel’s floorplan;

(7) Has an identified person or persons or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(8) Utilizes an age verification system approved by the commissioner; and

(9) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.
(i) “Private golf club” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club’s floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private golf club’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club’s licensed premises and as noted on the private golf club’s floorplan;

(6) Has an identified person or persons or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; and

(7) Utilizes an age verification system approved by the commissioner.
(j) “Private nine-hole golf course” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 50 members;

(2) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course’s floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private nine-hole golf course’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course’s licensed premises and as noted on the private nine-hole golf course’s floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; and

(7) Utilizes an age verification system approved by the commissioner.
The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation or public authority operating any park or airport may lease as lessor a building or portion thereof or other limited premises in any such park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

Notwithstanding any other provisions of this code to the contrary, licensees are hereby authorized to sell, tender, and serve alcoholic liquors by the drink and as otherwise authorized by the provisions of §60-1-1 et seq. of this code, other than in sealed packages, for consumption on the premises of the licensees, to their members and their guests in accordance with the provisions of this article, rules of the commissioner and as authorized under §60-6-8 of this code. The licensees may keep and maintain on their premises a supply of those lawfully acquired alcoholic liquors in such quantities as may be appropriate for the conduct of operations thereof.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

(a) Application for a license to operate a private club shall be made on such form as may be prescribed by the commissioner and shall include:

(1) The name of the applicant;

(2) If the applicant is an unincorporated association, the names and addresses of the members of its governing board;

(3) If the applicant is a corporation, the names and addresses of its officers and directors;
(4) The place at which the applicant will conduct its operations and whether the same is owned or leased by the applicant;

(5) The number of members of the applicant;

(6) The name or names of any national organizations with which applicant is affiliated and the nature of such affiliation;

(7) The size and nature of the dining and kitchen facilities operated by applicant;

(8) Accurate and complete ownership information;

(9) An attestation that the information in the application is true and accurate; and

(10) Such other information as the commissioner may reasonably require which shall include, but not be limited to, the criminal records, if any, of each member of the applicant’s governing board and/or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

(b) The application shall be verified by each member of the governing board of the applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers and all members of its board of directors. The application shall be accompanied by the license fee hereinafter prescribed and by a bond of the applicant in the penal sum of $5,000 with a corporate surety authorized to transact business in the state of West Virginia, payable to the State of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

(c) Under no circumstance may any college fraternity or sorority be issued a license to operate a private club.
(d) No license to operate a private club will be issued to applicants who discriminate against any person or group of persons because of race or color of such person or group of persons.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

(a) Upon receipt of a completed application referred to in §60-7-4 of this code, together with the accompanying fee and bond, the commissioner shall conduct an investigation to determine the accuracy of the matters contained in such completed application and whether applicant is a bona fide private club of good reputation in the community in which it shall operate. For the purpose of conducting such investigation, the commissioner may withhold the granting or refusal to grant such license for a period not to exceed 30 days or until the applicant has completed the conditions set forth in this article and in §60-7-4(a) of this code, all as determined by the commissioner. If it shall appear that such applicant is a bona fide private club of good reputation in the community in which it shall operate and that there is no false statement, no material misrepresentations, no hidden ownership, or persons with an undisclosed pecuniary interest, and no omissions or failures to disclose in such application as determined by the commissioner, he or she shall issue a license authorizing the applicant to sell alcoholic liquors as provided in §60-7-3 of this code, and otherwise shall refuse to issue such license, except that in the case of an application by a corporation or association to operate a private club in connection with:

(1) A state park, the Director of the Department of Natural Resources must grant his or her approval before the license can be issued; or
(2) A county or municipal park, or an airport, the authority governing the park or airport must grant its approval before the license can be issued.

A license may not be issued for a private club in any state park unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public. A license may not be issued for a private club in any county or municipal park, or an airport, unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public.

(b) Upon refusal to issue such license the commissioner shall make and enter an order denying such application, which denial and refusal shall be final unless a hearing is requested in accordance with the provisions of §60-7-13 of this code. When such refusal or denial becomes final the commissioner shall forthwith refund to the applicant his or her fees and bond accompanying the application.

(c) Such license shall be of such form and design as the commissioner may prescribe by reasonable rule or regulation and shall authorize the licensee to sell alcoholic liquors at only one location.

(d) Such license shall expire on June 30 next following the date of issue and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees and filing of the bond as required by this article.

(e) A license issued under the provisions of this article may not be transferable.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans’ organization or a nonprofit social club shall be $750.
(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section shall be $1,000 if the private club has fewer than 1,000 members, $2,000 if the private club is a private nine-hole golf course as defined in §60-7-2 of this code; $2,500 if the private club has 1,000 or more members, $4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code, and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, said private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas shall be $7,500, and the annual license fee for a private resort hotel with at least six but no more than 10 designated areas shall be $12,500. The annual license fee for a private resort hotel with at least 11 but no more than 15 designated areas shall be $17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas shall be $22,500: Provided, That a private resort hotel having obtained the license and paid the $22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of $150 per day, per designated area.

(c) The fee for any such license issued following January 1 of any year and to expire on June 30 of such year shall be one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional $150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee must be paid prior to
the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) All such fees shall be paid by the commissioner to the State Treasurer and credited to the General Revenue Fund of the state.

§60-7-6a. Special privilege of Class A private club licensee to operate separate but connected Class B license.

A Class A private club licensee with 1,000 or more members may, in the commissioner’s discretion, operate Class B licenses for the off-premises sale of nonintoxicating beer and wine in a connected but separately operated area of the Class A private club premises: Provided, That each business is licensed separately and operates separate cash registers and maintains separation barriers between the different licensed operations. Failure of a licensee to license two inner-connected businesses shall subject the licensee to the penalties under this article.

§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.

(b) To be eligible for the license authorized by subsection (a) of this section, the private fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality
(2) Shall make application with the commission at least 15 days pursuant to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of $750; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event. (c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days and no more than six licenses may be issued to the same person or entity in a calendar year.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section must be purchased from the licensed distributor that services the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 et seq. of this code.

(e) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 et seq. of this code.

(f) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 et seq. of this code.

(g) A licensee authorized by this section may utilize bona fide employees or volunteers to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.
(h) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products but shall not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

(i) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders of the commissioner: Provided, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: Provided, however, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee’s premises to:

1. Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in §60-6-8 of this code;

2. Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming, and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by duly licensed
charitable or public service organization (or its auxiliaries), pursuant to §47-20-1 et seq. of this code, and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-21-1 et seq. of this code, all of which are permissible on a licensee’s licensed premises when operated in accordance with this code, rules, and regulations: Provided, That a private resort hotel holding a license issued pursuant to §60-7-1 et seq. of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under §29-22A-1 et seq. and §29-22C-1 et seq., or §29-25-1 et seq. of this code, during hours of operation authorized by §29-22A-1 et seq. and §29-22C-1 et seq., or §29-25-1 et seq. of this code;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee’s premises, by any person less than 21 years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 7:00 a.m. on weekdays or Saturdays, between the hours of 3:00 a.m. and 10:00 a.m. on any Sunday or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or
50 alcoholic liquors, covered by this article, to any person who
51 is less than 21 years of age;

52 (7) With the intent to defraud, alter, change, or
53 misrepresent the quality, quantity, or brand name of any
54 alcoholic liquor;

55 (8) Sell or offer for sale any alcoholic liquor to any
56 person who is not a duly elected or approved dues-paying
57 member in good standing of said private club or a guest of
58 such member;

59 (9) Sell, offer for sale, give away, facilitate the use of or
60 allow the use of carbon dioxide, cyclopropane, ethylene,
61 helium, or nitrous oxide for purposes of human
62 consumption except as authorized by the commissioner;

63 (10)(A) Employ any person who is less than 18 years of
64 age in a position where the primary responsibility for such
65 employment is to sell, furnish, tender, serve, or give
66 nonintoxicating beer, wine, or alcoholic liquors to any
67 person;

68 (B) Employ any person who is between the ages of 18
69 and 21 who is not directly supervised by a person aged 21
70 or over in a position where the primary responsibility for
71 such employment is to sell, furnish, tender, serve or give
72 nonintoxicating beer, wine, or alcoholic liquors to any
73 person; or

74 (11) Violate any reasonable rule of the commissioner.

75 (b) It is lawful for any licensee to advertise price and
76 brand in any news media or other means, outside of the
77 licensee’s premises.

78 (c) Any person who violates any of the foregoing
79 provisions is guilty of a misdemeanor and, upon conviction
80 thereof, shall be fined not less than $500 nor more than
81 $1,000, or imprisoned in jail for a period not to exceed one
82 year, or both fined and imprisoned.
ARTICLE 8. SALE OF WINES.

§60-8-34. When retail sales prohibited.

It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants, agents, or employees to sell or deliver wine between the hours of 2:00 a.m. and 10:00 a.m. or, it shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on Sundays, or between the hours of 2:00 a.m. and 7:00 a.m. on weekdays and Saturdays.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding $200: Provided, That there is exemption from this prohibition for: (a) A private hotel, private nine-hole golf course, private resort hotel, and private golf club licensed pursuant to §60-7-1 et seq. of this code and in compliance with §60-7-2(g)(8), §60-7-2(h)(7), §60-7-2(i)(7), and §60-7-2(j)(7) of this code; (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has
been approved by the Alcohol Beverage Control Commissioner and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee’s floorplan; or (c) a private fair and festival that is in compliance with §60-7-2(f)(7) of this code, by utilizing a mandatory carding or identification program whereby all members or guests being served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and must provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.

CHAPTER 18
(Com. Sub. for H. B. 2481 - By Delegates Steele, Foster, Kessinger, Pushkin, Barrett and Pyles)

[Passed February 19, 2019; in effect from passage.]
[Approved by the Governor on February 28, 2019.]

AN ACT to amend and reenact §60-3A-18 and §60-3A-25 of the Code of West Virginia, 1931, as amended, all relating to allowing retail liquor licensees to sell liquor on Sundays, other than Easter Sunday and those Sundays on which Christmas falls, beginning no earlier than 1 p.m.; and removing the criminal offense of selling liquor on Sundays.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-18. Days and hours retail licensees may sell liquor.
Retail licensees may not sell liquor on Easter Sunday, Christmas day, or before 1 p.m. on other Sundays, except a Sunday on which Christmas falls, or between the hours of 12:00 a.m. and 8:00 a.m., except that wine and fortified wines may be sold on those days and at such times as authorized in §60-8-34 of this code.

§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.

(a) It is unlawful for any retail licensee, or agent or employee thereof, on such retail licensee’s premises to:

(1) Sell or offer for sale any liquor other than from the original package or container;

(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under 21 years of age;

(3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;

(4) Sell or offer for sale any liquor other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;

(5) Permit the consumption by any person of any liquor;

(6) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any liquor;

(7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other person;

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or
(9) Permit any person to break the seal on any package or bottle of liquor.

(b) Any person who violates any provision of this article, except section 24 of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor and, shall, upon conviction thereof, for each offense be fined not less than $100 or more than $5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under this article.

(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least 18 years of age to serve in any retail licensee’s lawful employment at any retail outlet operated by such retail licensee, or from having such person sell or deliver liquor under the provisions of this article. With the prior approval of the commissioner, a retail licensee may employ persons at any retail outlet operated by such retail licensee who are less than 18 years of age but at least 16 years of age, but such persons’ duties shall not include the sale or delivery of liquor: Provided, That the authorization to employ such persons under the age of 18 years shall be clearly indicated on the retail license issued to any such retail licensee.
AN ACT expiring funds to the balance of the Auditor’s Office – Chief Inspector’s Fund, fund 1235, fiscal year 2019, organization 1200, in the amount of $1,500,000, from the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2019, organization 1200, by supplementing and amending chapter 12, Acts of the Legislature, 2018, known as the Budget Bill.

Whereas, The Legislature finds that the account balance in the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2019, organization 1200 exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2019, to the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2019, organization 1200, be decreased by expiring the amount of $1,500,000 to the Auditor’s Office – Chief Inspector’s Fund, fund 1235, fiscal year 2019, organization 1200.

And, that the total appropriation for the fiscal year ending June 30, 2019, to fund 1235, fiscal year 2019, organization 1200, be supplemented and amended by increasing an existing item of appropriation as follows:
### SEC. 3. Appropriations from other funds.

**EXECUTIVE**

**123– Auditor’s Office**

**Chief Inspector’s Fund**

(WV Code Chapter 6)

Fund 1235 FY 2019 Org 1200

<table>
<thead>
<tr>
<th>Appropriation Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100 $ 1,500,000</td>
</tr>
</tbody>
</table>

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### CHAPTER 20

(S. B. 424 - By Senators Carmichael (Mr. President) and Prezioso)

[By Request of the Executive]

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Governor’s Office, Civil Contingent Fund, fund 0105, fiscal year 2019, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which
included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised 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 remains 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 0105, fiscal year 2019, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II – APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXECUTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 – Governor’s Office -</td>
</tr>
<tr>
<td>Civil Contingent Fund</td>
</tr>
<tr>
<td>(WV Code Chapter 5)</td>
</tr>
</tbody>
</table>

Fund 0105 FY 2019 Org 0100

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a Civil Contingent Fund (R)</td>
<td>$ 10,000,000</td>
</tr>
<tr>
<td>61400</td>
<td>61400</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>61400</td>
</tr>
<tr>
<td>1a Civil Contingent Fund (R)</td>
<td>$ 10,000,000</td>
</tr>
</tbody>
</table>
AN ACT supplementing and amending by increasing an existing item of appropriation and adding new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the State Board of Education, State Department of Education, fund 0313, fiscal year 2019, organization 0402, and to the State Board of Education, Vocational Division, fund 0390, fiscal year 2019, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised 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 remains 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:*

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

DEPARTMENT OF EDUCATION

43 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2019 Org 0402

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>36 Communities in Schools (R).... 78103</td>
<td>$ 3,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Communities in Schools (fund 0313, appropriation 78103) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0390, fiscal year 2019, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46 – State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2019 Org 0402

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>7a Jim’s Dream (R)...................... 14901</td>
<td>$ 9,700,000</td>
</tr>
</tbody>
</table>
From the above appropriation for Jim’s Dream (fund 0390, appropriation 14901), funds are to be used for rehabilitation and workforce readiness transition programs.

Any unexpended balance remaining in the appropriation for Jim’s Dream (fund 0390, appropriation 14901) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

CHAPTER 22

(S. B. 442 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 22, 2019; in effect from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT supplementing and amending by decreasing an existing appropriation and adding a new appropriation of federal funds out of the Treasury to the Department of Revenue – Insurance Commissioner, fund 8883, fiscal year 2019, organization 0704, by supplementing, amending, decreasing, and adding the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 8883, fiscal year 2019, organization 0704, be supplemented and amended by decreasing an existing item of appropriation as follows:
Sec. 6. Appropriations of federal funds.

DEPARTMENT OF REVENUE

357 – Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2019 Org 0704

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>13000</td>
<td>$10,000</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>00100</td>
<td>$10,000</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>00100</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 8883, fiscal year 2019, organization 0704, be supplemented and amended by adding a new item of appropriation as follows:
AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Community Mental Health Services, fund 8794, fiscal year 2019, organization 0506, to the Department of Health and Human Resources, Division of Human Services – Energy Assistance, fund 8755, fiscal year 2019, organization 0511, and to the Department of Health and Human Resources, Division of Human Services – Child Care and Development, fund 8817, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 8794, fiscal year 2019, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.
Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

372 – Division of Health –

Community Mental Health Services

Fund 8794 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 4 Current Expenses</td>
<td>13000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 8755, fiscal year 2019, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

373 – Division of Human Services –

Energy Assistance

Fund 8755 FY 2019 Org 0511

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1 Personal Services and 2 Employee Benefits</td>
<td>00100</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 8817, fiscal year 2019, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

376 – Division of Human Services –

Child Care and Development

Fund 8817 FY 2019 Org 0511

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 4 Current Expenses</td>
<td>$13,000,000</td>
</tr>
</tbody>
</table>

CHAPTER 24

(S. B. 444 - By Senators Carmichael (Mr. President) and Prezioso)

[By Request of the Executive]

[Passed February 23, 2019; in effect from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2019, organization 0506, and to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2019, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.
Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2019, organization 0506, and in the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2019, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 5163, fiscal year 2019, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$872,611</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 5214, fiscal year 2019, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$872,611</td>
</tr>
</tbody>
</table>
Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

207 – Division of Health –

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 4 Current Expenses ..................... 13000</td>
<td>$ 1,138,304</td>
</tr>
</tbody>
</table>

CHAPTER 25

(S. B. 452 - By Senators Carmichael (Mr. President) and Prezioso)

[By Request of the Executive]

[Passed February 21, 2019; in effect from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Military Affairs and Public Safety, Division of Justice and Community Services – Second Chance Driver’s License Program Account, fund 6810, fiscal year 2019, organization 0620, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Military Affairs and Public Safety, Division of Justice and Community
Services – Second Chance Driver’s License Program Account, fund 6810, fiscal year 2019, organization 0620, that is available for expenditure during the fiscal year ending June 30, 2019, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation for the fiscal year ending June 30, 2019, to fund 6810, fiscal year 2019, organization 0620, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

237 – Division of Justice and Community Services –

*Second Chance Driver’s License Program Account*

(WV Code Chapter 17B)

Fund 6810 FY 2019 Org 0620

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$100,000</td>
</tr>
</tbody>
</table>
AN ACT supplementing and amending by increasing existing items of appropriation and adding a new item of appropriation 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; and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated January 9, 2019, setting forth therein the 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 fiscal year 2019; and

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue and Executive Message dated March 6, 2019, which included a revised estimate of revenues for the fiscal year 2019; and

Whereas, It appears from the Governor’s statement of the State Fund, General Revenue, and Executive Message, there now remains 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 by increasing an existing item of appropriation and adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2019 Org 0506

1  24  Health Right Free Clinics ........  72700  $ 1,000,000
2  24a Office of Medical Cannabis.....  #######  269,202

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0403, fiscal year 2019, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2019 Org 0511
AN ACT making a supplementary appropriation by adding new items of appropriation from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, to the Department of Administration, Office of Technology, fund 2532, fiscal year 2019, organization 0231, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 9, 2019, which included a statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for fiscal year 2019; and

Whereas, It appears from the Governor’s statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

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

312a – Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2019 Org 0231

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Excess Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Cyber Security (R)...................</td>
<td>XXXXX $ 4,200,000</td>
</tr>
<tr>
<td>2 Enterprise Data Center (R) ..........</td>
<td>XXXXX 12,000,000</td>
</tr>
<tr>
<td>3 Enterprise Telephony Modernization (R)</td>
<td>XXXXX 2,225,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Cyber Security (fund 2532, appropriation XXXXX), Enterprise Data Center (fund 2532, appropriation XXXXX), and Enterprise Telephony Modernization (fund 2532, appropriation XXXXX) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.
AN ACT supplementing and amending by adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2019, organization 0209, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated January 9, 2019, setting forth therein the 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 fiscal year 2019; and

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue and Executive Message dated March 6, 2019, which included a revised estimate of revenues for the fiscal year 2019; and

Whereas, It appears from the Governor’s statement of the State Fund, General Revenue, and Executive Message, there now remains 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 0203, fiscal year 2019, organization 0209, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

20 – Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2019 Org 0209

1  4a Enterprise Resource Planning System ...................... 08701 $298,000

The above appropriation for Enterprise Resource Planning System (fund 0203, appropriation 08701) shall be transferred to the Enterprise Resource Planning System Fund (fund 9080).

CHAPTER 29

(S. B. 680 - By Senators Blair, Boley, Hamilton, Maroney, Roberts, Swope, Sypolt, Takubo, Tarr, Facemire, Ihlenfeld, Palumbo, Prezioso, Stollings and Unger)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by increasing existing items of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of
Military Affairs and Public Safety, Division of Homeland Security and Emergency Management, fund 0443, fiscal year 2019, organization 0606; and to the Department of Military Affairs and Public Safety, Division of Corrections, Central Office, fund 0446, fiscal year 2019, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated January 9, 2019, setting forth therein the 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 fiscal year 2019; and

Whereas, The Governor submitted to the Legislature a statement of the State Fund, General Revenue and Executive Message dated March 6, 2019, which included a revised estimate of revenues for the fiscal year 2019; and

Whereas, It appears from the Governor’s statement of the State Fund, General Revenue, and Executive Message, there now remains 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 0443, fiscal year 2019, organization 0606, 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
66 – Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2019 Org 0606

1 8 SIRN ...........................................  55401 $ 421,214

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0446, fiscal year 2019, organization 0608, 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

67 – Division of Corrections –

Central Office

(WV Code Chapters 25, 28, 49, and 62)

Fund 0446 FY 2019 Org 0608

1 Current Expenses .........................  13000 $ 345,247
AN ACT making a supplementary appropriation of Lottery Net Profits by adding a new item of appropriation from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Department of Education and the Arts, Educational Broadcasting Authority, fund 3587, fiscal year 2019, organization 0439, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 9, 2019, which included a statement of the Lottery Fund, setting forth therein the unappropriated cash balance as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for fiscal year 2019; and

Whereas, It appears from the Governor’s Statement of the Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

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

That the total appropriation for the fiscal year ending June 30, 2019, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

295a – Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 3587 FY 2019 Org 0439

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<td>1 1 Capital Outlay and</td>
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Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

CHAPTER 31

(Com. Sub. for H. B. 2020 - By Hanshaw (Mr. Speaker) and Delegate Miley)

[By Request of the Executive]

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor with deletions and reductions on March 14, 2019.]

AN ACT making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:
TITLE I – GENERAL PROVISIONS.

§1. General Policy. – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2020.

§2. Definitions. — For the purpose of this bill:

“Governor” shall mean the Governor of the State of West Virginia.

“Code” shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year 2020” shall mean the period from July 1, 2019, through June 30, 2020.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

“Special revenue funds” shall mean specific revenue sources which by legislative enactments are not required to be accounted for as general revenue, including federal funds.
“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

Sec. 3. Classification of appropriations. — An appropriation for:

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. “Personal services” shall include “annual increment” for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its “unclassified” appropriation, or its “current expenses” appropriation or other appropriate appropriation. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.
Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation and workers compensation. Such expenditures shall be considered an employee benefit.

“BRIM Premiums” shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for “BRIM Premium” be insufficient to cover such cost, the remainder of such costs shall be paid by each spending unit from its “unclassified” appropriation, its “current expenses” appropriation or any other appropriate appropriation to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments. If there is no appropriation for “BRIM Premium” such costs shall be paid by each spending unit from its “current expenses” appropriation, “unclassified” appropriation or other appropriate appropriation.

West Virginia Council for Community and Technical College Education and Higher Education Policy Commission entities operating with special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

“Current expenses” shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands. Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.
“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

From appropriations made to the spending units of state government, upon approval of the Governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, that the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: Provided, however, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services and employee benefits” appropriation unless the source funds are also wholly from a “personal services and employee benefits” line, or unless
the source funds are from another appropriation that has
exclusively funded employment expenses for at least twelve
consecutive months prior to the time of transfer and the
position(s) supported by the transferred funds are also
permanently transferred to the receiving agency or board
within the department: Provided further, That the secretary
of each department and the director, commissioner,
executive secretary, superintendent, chairman or any other
agency head not governed by a departmental secretary as
established by Chapter 5F of the Code shall have the
authority to transfer funds appropriated to “personal
services and employee benefits,” “current expenses,”
“repairs and alterations,” “equipment,” “other assets,”
“land,” and “buildings” to other appropriations within the
same account and no funds from other appropriations shall
be transferred to the “personal services and employee
benefits” or the “unclassified” appropriation: And provided
further, That no authority exists hereunder to transfer funds
into appropriations to which no funds are legislatively
appropriated: And provided further, That if the Legislature
consolidates, reorganizes or terminates agencies, boards or
functions, the secretary or other appropriate agency head, or
in the case of the termination of a spending unit of the state,
the Director of the State Budget Office, in the absence of
general law providing otherwise, may transfer the funds
formerly appropriated to such agency, board or function,
allocating items of appropriation as may be necessary if
only part of the item may be allocated, in order to implement
such consolidation, reorganization or termination. No funds
may be transferred from a Special Revenue Account,
dedicated account, capital expenditure account or any other
account or fund specifically exempted by the Legislature
from transfer, except that the use of the appropriations from
the State Road Fund for the office of the Secretary of the
Department of Transportation is not a use other than the
purpose for which such funds were dedicated and is
permitted.
Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.

Sec. 4. Method of expenditure. — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

Sec. 5. Maximum expenditures. — No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

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Section 1. Appropriations from general revenue. –
From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2020.

**LEGISLATIVE**

1-Senate

Fund 0165 FY 2020 Org 2100
The appropriations for the Senate for the fiscal year 2019 are to remain in full force and effect and are hereby reappropriated to June 30, 2020. Any balances so reappropriated may be transferred and credited to the fiscal year 2019 accounts.

Upon the written request of the Clerk of the Senate, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.
The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the Auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

The distribution of the blue book shall be by the office of the Clerk of the Senate and shall include 75 copies for each member of the Legislature and two copies for each classified and approved high school and junior high or middle school and one copy for each elementary school within the state.

Included in the above appropriation for Senate (fund 0165, appropriation 02100), an amount not less than $5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.
2-House of Delegates

Fund 0170 FY 2020 Org 2200

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The appropriations for the House of Delegates for the fiscal year 2019 are to remain in full force and effect and are hereby reappropriated to June 30, 2020. Any balances so reappropriated may be transferred and credited to the fiscal year 2019 accounts.

Upon the written request of the Clerk of the House of Delegates, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates’ offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Speaker of the House of Delegates shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution,
and the compensation of all personnel shall be as fixed in
such House resolution for the session, or fixed by the
Speaker during and between sessions of the Legislature,
notwithstanding such House resolution. The Clerk of the
House of Delegates is hereby authorized to draw
requisitions upon the Auditor for such services, payable out
of the appropriation for the Compensation and Per Diem of
Officers and Employees or Current Expenses and
Contingent Fund of the House of Delegates.

For duties imposed by law and by the House of
Delegates, including salary allowed by law as keeper of the
rolls, the Clerk of the House of Delegates shall be paid a
monthly salary as provided in the House resolution, unless
increased between sessions under the authority of the
Speaker and payable out of the appropriation for
Compensation and Per Diem of Officers and Employees or
Current Expenses and Contingent Fund of the House of
Delegates.

Included in the above appropriation for House of
Delegates (fund 0170, appropriation 02100), an amount not
less than $5,000 is to be used for the West Virginia
Academy of Family Physicians - Doc of the Day Program.

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2020 Org 2300

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<td>Legislative Printing (R)</td>
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<td>Legislative Rule-Making Review Committee (R)</td>
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<td>$9,240,457</td>
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The appropriations for the Joint Expenses for the fiscal year 2019 are to remain in full force and effect and are hereby reappropriated to June 30, 2020. Any balances reappropriated may be transferred and credited to the fiscal year 2019 accounts.

Upon the written request of the Clerk of the Senate, with the approval of the President of the Senate, and the Clerk of the House of Delegates, with the approval of the Speaker of the House of Delegates, and a copy to the Legislative Auditor, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

**JUDICIAL**

*4-Supreme Court –*

*General Judicial*

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<thead>
<tr>
<th>Fund</th>
<th>0180 FY 2020 Org 2400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits (R) .......... 00100 $ 110,767,344</td>
</tr>
<tr>
<td>2</td>
<td>Intermediate Court of Appeals...... 09001  0</td>
</tr>
<tr>
<td>3</td>
<td>Military Service Members Court (R)............... ##### 300,000</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses (R).................... 13000 9,943,616</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations (R) ........... 06400 10,000</td>
</tr>
<tr>
<td>6</td>
<td>Equipment (R).......................... 07000 1,600,000</td>
</tr>
<tr>
<td>7</td>
<td>Judges’ Retirement System (R) .... 11000 791,000</td>
</tr>
<tr>
<td>8</td>
<td>Buildings (R)............................ 25800 20,000</td>
</tr>
<tr>
<td>9</td>
<td>Other Assets (R)............................ 69000 200,000</td>
</tr>
<tr>
<td>10</td>
<td>BRIM Premium (R)............................ 91300 690,384</td>
</tr>
<tr>
<td>11</td>
<td>Total...................................... $ 124,322,344</td>
</tr>
</tbody>
</table>

The appropriations to the Supreme Court of Appeals for the fiscal years 2017, 2018 and 2019 are to remain in full force and effect and are hereby reappropriated to June 30, 2020. Any balances so reappropriated may be transferred and credited to the fiscal year 2019 accounts.
This fund shall be administered by the Administrative Director of the Supreme Court of Appeals, who shall draw requisitions for warrants in payment in the form of payrolls, making deductions there from as required by law for taxes and other items.

The appropriation for the Judges’ Retirement System (fund 0180, appropriation 11000) is to be transferred to the Consolidated Public Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5-Governor’s Office

(WV Code Chapter 5)

Fund 0101 FY 2020 Org 0100

1 Personal Services and Employee Benefits............... 00100 $ 3,250,758
2 Current Expenses (R)..................... 13000 800,000
3 Repairs and Alterations............... 06400 25,000
4 National Governors Association.... 12300 60,700
5 Herbert Henderson Office of Minority Affairs....... 13400 146,726
6 BRIM Premium.............................. 91300 183,645
7 Total......................................... $ 4,466,829

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), and Current Expenses (fund 0101, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, appropriation 13400) shall be transferred to the Minority Affairs Fund (fund 1058).
### 6-Governor’s Office –

**Custodial Fund**

(WV Code Chapter 5)

Fund 0102 FY 2020 Org 0100

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$381,293</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>183,158</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>5,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$569,451</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Appropriations are to be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

### 7-Governor’s Office –

**Civil Contingent Fund**

(WV Code Chapter 5)

Fund 0105 FY 2020 Org 0100

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Business and Economic Development Stimulus (fund 0105, appropriation 28300), and Civil Contingent Fund – 2012 Natural Disasters – Total – Surplus (fund 0105, appropriation 33000) are hereby reappropriated for expenditure during the fiscal year 2020.
appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), and Natural Disasters – Surplus (fund 0105, appropriation 76400) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 as West Virginia’s contribution to the interstate oil compact commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor’s Office.

8-Auditor’s Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2020 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$ 2,797,589</td>
</tr>
<tr>
<td>Employee Benefits..................</td>
<td>13000</td>
<td>13,429</td>
</tr>
<tr>
<td>BRIM Premium..........................</td>
<td>91300</td>
<td>12,077</td>
</tr>
<tr>
<td>Total..................................</td>
<td></td>
<td>$ 2,823,095</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0116, appropriation 00100), is $95,000 for the Salary of the Auditor.
### 9-Treasurer’s Office

(WV Code Chapter 12)

Fund 0126 FY 2020 Org 1300

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$2,561,063</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>30,415</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>782,911</td>
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<tr>
<td>Abandoned Property Program</td>
<td>11800</td>
<td>41,794</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>10,000</td>
</tr>
<tr>
<td>ABLE Program</td>
<td>69201</td>
<td>150,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>59,169</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$3,635,352</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0126, appropriation 00100), is $95,000 for the Salary of the Treasurer.

### 10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$6,346,674</td>
</tr>
<tr>
<td>Animal Identification Program</td>
<td>03900</td>
<td>131,942</td>
</tr>
<tr>
<td>State Farm Museum</td>
<td>05500</td>
<td>87,759</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>141,960</td>
</tr>
<tr>
<td>Gypsy Moth Program (R)</td>
<td>11900</td>
<td>1,003,440</td>
</tr>
<tr>
<td>WV Farmers Market</td>
<td>12801</td>
<td>150,467</td>
</tr>
<tr>
<td>Black Fly Control</td>
<td>13700</td>
<td>453,698</td>
</tr>
<tr>
<td>Donated Foods Program</td>
<td>36300</td>
<td>45,000</td>
</tr>
</tbody>
</table>
10 Veterans to Agriculture Program (R) ............... 36301 255,624
11 Predator Control (R) .......................... 47000 176,400
12 Bee Research..................................... 69100 70,634
13 Microbiology Program......................... 78500 99,828
14 Moorefield Agriculture Center .......... 78600 975,284
15 Chesapeake Bay Watershed.......... 83000 112,427
16 Livestock Care Standards Board...... 84300 8,820
17 BRIM Premium................................. 91300 138,905
18 State FFA-FHA Camp and
19 Conference Center ................. 94101 638,554
20 Threat Preparedness....................... 94200 73,122
21 WV Food Banks............................... 96900 126,000
22 Senior’s Farmers’ Market
23 Nutrition Coupon Program..... 97000 55,835
24 Total........................................... $11,092,373

Any unexpended balances remaining in the
appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Veterans to Agriculture Program (fund 0131, appropriation 36301), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0131, appropriation 00100), is $95,000 for the Salary of the Commissioner.

The above appropriation for Predator Control (fund 0131, appropriation 47000) is to be made available to the United States Department of Agriculture, Wildlife Services to administer the Predator Control Program.

A portion of the Current Expenses appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.
From the above appropriation for WV Food Banks (fund 0131, appropriation 96900), $20,000 is for House of Hope and the remainder of the appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Appropriation Code</th>
<th>Budget Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td>00100</td>
<td>$ 794,191</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$ 794,191</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>77,059</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>317,848</td>
</tr>
<tr>
<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>12000</td>
<td>9,799,709</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>91300</td>
<td>34,428</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$11,023,235</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000), and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

12-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Appropriation Code</th>
<th>Budget Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$ 668,030</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>7,090</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>82,605</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 757,725</td>
</tr>
</tbody>
</table>
Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13-Department of Agriculture –

Agricultural Awards Fund

(WV Code Chapter 19)

Fund 0136 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Program Description</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Programs and Awards for</td>
<td></td>
</tr>
<tr>
<td>4-H Clubs and FFA/FHA ........................................</td>
<td>$15,000</td>
</tr>
<tr>
<td>Commissioner’s Awards and Programs ................................</td>
<td>39,250</td>
</tr>
<tr>
<td>Total ........................................................................</td>
<td>$54,250</td>
</tr>
</tbody>
</table>

14-Department of Agriculture –

West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Program Description</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits ................................................................</td>
<td>$99,547</td>
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<tr>
<td>Unclassified ......................................................................</td>
<td>950</td>
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<tr>
<td>Total ...........................................................................</td>
<td>$100,497</td>
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</tbody>
</table>

15-Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2020 Org 1500

<table>
<thead>
<tr>
<th>Program Description</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits (R) .............................................</td>
<td>$2,818,788</td>
</tr>
<tr>
<td>Unclassified (R) ...................................................</td>
<td>24,428</td>
</tr>
<tr>
<td>Current Expenses (R) ..............................................</td>
<td>762,097</td>
</tr>
<tr>
<td>Repairs and Alterations............................................</td>
<td>1,000</td>
</tr>
<tr>
<td>Item</td>
<td>Code</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
</tr>
<tr>
<td>Criminal Convictions and Habeas Corpus Appeals (R)</td>
<td>26000</td>
</tr>
<tr>
<td>Better Government Bureau</td>
<td>74000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the above appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020, with the exception of fund 0150, fiscal year 2016, appropriation 00100 ($208,241.14), and fund 0150, fiscal year 2017, appropriation 00100 ($1,474,457.07) which shall expire on June 30, 2019.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0150, appropriation 00100), is $95,000 for the Salary of the Attorney General.

When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: Provided, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the Attorney General: Provided, however, That if the spending unit and the Attorney General are unable to agree on the amount and terms of the reimbursement, the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for final determination.
### 16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2020 Org 1600

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$118,794</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>09900</td>
<td>9,555</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>805,948</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>23,297</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$957,594</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0155, appropriation 00100), is $95,000 for the Salary of the Secretary of State.

### 17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2020 Org 1601

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$2,477</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>75</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>4,956</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$7,508</td>
</tr>
</tbody>
</table>

### DEPARTMENT OF ADMINISTRATION

### 18-Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)
Fund 0186 FY 2020 Org 0201

1 Personal Services and
2 Employee Benefits .................... 00100 $ 606,584
3 Unclassified ................................... 09900 9,177
4 Current Expenses ....................... 13000
5 .................................................. 85,009
6 Repairs and Alterations ............... 06400 100
7 Equipment .................................... 07000 1,000
8 Financial Advisor (R) .................... 30400 27,546
9 Lease Rental Payments ................. 51600 15,000,000
10 Design-Build Board .................... 54000 4,000
11 Other Assets ............................... 69000 100
12 BRIM Premium ............................ 91300 6,736
13 Total ........................................ $ 15,740,252

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The appropriation for Lease Rental Payments (fund 0186, appropriation 51600) shall be disbursed as provided by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2020 Org 0205

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.
20-Division of Finance
(WV Code Chapter 5A)

Fund 0203 FY 2020 Org 0209

1 Personal Services and
2 Employee Benefits................. 00100 $ 64,696
3 Unclassified ........................... 09900 1,400
4 Current Expenses ..................... 13000 66,721
5 GAAP Project (R) ...................... 12500 612,666
6 BRIM Premium.......................... 91300 7,517
7 Total................................... $ 753,000

8 Any unexpended balance remaining in the
9 appropriation for GAAP Project (fund 0203, appropriation
10 12500) at the close of the fiscal year 2019 is hereby
11 reappropriated for expenditure during the fiscal year 2020.

21-Division of General Services
(WV Code Chapter 5A)

Fund 0230 FY 2020 Org 0211

1 Personal Services and
2 Employee Benefits................. 00100 $ 2,722,499
3 Unclassified ........................... 09900 20,000
4 Current Expenses ..................... 13000 728,849
5 Repairs and Alterations............. 06400 500
6 Equipment.............................. 07000 5,000
7 Fire Service Fee ...................... 12600 14,000
8 Buildings (R).......................... 25800 500
9 Preservation and Maintenance of
10 Statues and Monuments
11 on Capitol Grounds............... 37100 68,000
12 Capital Outlay,
13 Repairs and Equipment (R) .... 58900 27,078,888
14 Other Assets........................ 69000 500
15 Land (R).............................. 73000 500
16 BRIM Premium........................ 91300 129,983
Any unexpended balances remaining in the above appropriations for Buildings (fund 0230, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900), Capital Outlay, Repairs and Equipment – Surplus (fund 0230, appropriation 67700), and Land (fund 0230, appropriation 73000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (fund 0230, appropriation 37100), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

The above appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) shall be expended for capital improvements, maintenance, repairs and equipment for state-owned buildings.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2020 Org 0213

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
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<tr>
<td>Employee Benefits</td>
<td>09900</td>
<td>144</td>
</tr>
<tr>
<td>Unclassified</td>
<td>13000</td>
<td>1,285</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>06400</td>
<td>200</td>
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<td>Repairs and Alterations</td>
<td>91300</td>
<td>6,922</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,064,477</td>
</tr>
</tbody>
</table>

The Division of Highways shall reimburse Fund 2031 within the Division of Purchasing for all actual expenses incurred pursuant to the provisions of W.Va. Code §17-2A-13.
23-Travel Management  
(WV Code Chapter 5A)  

Fund **0615** FY **2020** Org **0215**  

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>FY 2020 FY 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100</td>
<td>Personal Services and</td>
<td>$802,363</td>
</tr>
<tr>
<td>2</td>
<td>09900</td>
<td>Employee Benefits</td>
<td>12,032</td>
</tr>
<tr>
<td>3</td>
<td>13000</td>
<td>Current Expenses</td>
<td>440,247</td>
</tr>
<tr>
<td>4</td>
<td>06400</td>
<td>Repairs and Alterations</td>
<td>1,000</td>
</tr>
<tr>
<td>5</td>
<td>07000</td>
<td>Equipment</td>
<td>5,000</td>
</tr>
<tr>
<td>6</td>
<td>25800</td>
<td>Buildings (R)</td>
<td>100</td>
</tr>
<tr>
<td>7</td>
<td>69000</td>
<td>Other Assets</td>
<td>100</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Total</td>
<td>$1,260,842</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.  

24-Commission on Uniform State Laws  
(WV Code Chapter 29)  

Fund **0214** FY **2020** Org **0217**  

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>FY 2020 FY 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>13000</td>
<td>Current Expenses</td>
<td>$45,550</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>To pay expenses for members of the commission on uniform state laws.</td>
<td></td>
</tr>
</tbody>
</table>

25-West Virginia Public Employees Grievance Board  
(WV Code Chapter 6C)  

Fund **0220** FY **2020** Org **0219**  

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>FY 2020 FY 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100</td>
<td>Personal Services and</td>
<td>$969,627</td>
</tr>
<tr>
<td>2</td>
<td>09900</td>
<td>Employee Benefits</td>
<td>1,000</td>
</tr>
<tr>
<td>3</td>
<td>13000</td>
<td>Current Expenses</td>
<td>143,754</td>
</tr>
</tbody>
</table>
5 Equipment........................................ 07000 50  
6 BRIM Premium.............................. 91300 10,281  
7 Total........................................... $ 1,124,712  

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2020 Org 0220

1 Personal Services and
2 Employee Benefits....................... 00100 $ 606,969  
3 Unclassified .................................. 09900 2,200  
4 Current Expenses............................ 13000 104,501  
5 Repairs and Alterations.................. 06400 500  
6 Other Assets.................................. 69000 100  
7 BRIM Premium.............................. 91300 5,574  
8 Total........................................... $ 719,844  

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2020 Org 0221

1 Personal Services and
2 Employee Benefits....................... 00100 $ 1,711,081  
3 Unclassified .................................. 09900 314,700  
4 Current Expenses............................ 13000 12,740  
5 Public Defender Corporations ....... 35200 19,538,435  
6 Appointed Counsel Fees (R).......... 78800 12,898,115  
7 BRIM Premium.............................. 91300 10,575  
8 Total........................................... $ 34,485,646  

9 Any unexpended balance remaining in the above  
10 appropriation for Appointed Counsel Fees (fund 0226,  
11 appropriation 78800) at the close of the fiscal year 2019 is  
12 hereby reappropriated for expenditure during the fiscal year  
13 2020.
The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).

28-Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2020 Org 0224

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
</tr>
<tr>
<td>Total</td>
<td>4055</td>
</tr>
</tbody>
</table>

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2020 Org 0225

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>PEIA Subsidy</td>
<td>80100</td>
</tr>
<tr>
<td>PEIA Subsidy</td>
<td>21,000,000</td>
</tr>
</tbody>
</table>

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.

The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.
### 30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2020 Org 0228

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forensic Medical</td>
<td>68300</td>
<td>$141,579</td>
</tr>
<tr>
<td>Federal Funds/Grant Match (R)</td>
<td>74900</td>
<td>$105,074</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$246,653</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

### 31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2020 Org 0233

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$681,101</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>1,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>138,631</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>100</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>2,500</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>8,534</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$831,866</strong></td>
</tr>
</tbody>
</table>

### DEPARTMENT OF COMMERCE

#### 32-West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2020 Org 0304

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism – Brand Promotion</td>
<td>61803</td>
<td>$5,000,000</td>
</tr>
</tbody>
</table>

Tourism – Public Relations          61804  750,000
Tourism – Events and Sponsorships 61805  250,000
Tourism – Industry Development..  61806  250,000
State Parks and Recreation Advertising 61900 __750,000__
Total........................................................................ $ 7,000,000

The Executive Director of the West Virginia Tourism Office, with approval from the Secretary of Commerce, shall have the authority to transfer between the above items of appropriation.

33-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2020 Org 0305

Personal Services and Employee Benefits.............. 00100 $ 2,881,455
Unclassified ........................................... 09900  21,435
Current Expenses ..................................... 13000  338,953
Repairs and Alterations............................ 06400  80,000
Equipment (R)........................................ 07000  2,061
BRIM Premium........................................ 91300 __98,754__
Total...................................................... $ 3,422,658

Any unexpended balance remaining in the appropriation for Equipment (fund 0250, appropriation 07000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

34-Geological and Economic Survey

(WV Code Chapter 29)
### Fund 0253 FY 2020 Org 0306

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,678,448</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>27,678</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>51,524</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>968</td>
</tr>
<tr>
<td>Mineral Mapping System (R)</td>
<td>20700</td>
<td>1,134,143</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>24,486</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,917,247</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The above Unclassified and Current Expense appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.

---

### Fund 0256 FY 2020 Org 0307

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$4,400,420</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>108,055</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>3,765,277</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>13200</td>
<td>241,570</td>
</tr>
<tr>
<td>Local Economic Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>13300</td>
<td>1,250,000</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>13600</td>
<td>152,585</td>
</tr>
<tr>
<td>Guaranteed Work Force</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>24200</td>
<td>976,579</td>
</tr>
<tr>
<td>Mainstreet Program</td>
<td>79400</td>
<td>167,467</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>3,157</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Sales and Marketing Enhancement – Surplus (fund 0256, appropriation 05099), Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Guaranteed Work Force Grant (fund 0256, appropriation 24200), Industrial Park Assistance (fund 0256, appropriation 48000), and Local Economic Development Assistance (fund 0256, appropriation 81900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the West Virginia Development Office for the award of funding assistance to county and regional economic development corporations or authorities participating in the Certified Development Community Program developed under the provisions of W.Va. Code §5B-2-14. The West Virginia Development Office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed $34,000 per county served by an economic development or redevelopment corporation or authority.

36-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2020 Org 0308

1 Personal Services and $ 1,564,676
   Employee Benefits............... 00100
2 Current Expenses.................... 13000 227,000
3 Repairs and Alterations............. 06400 28,000
37-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2020 Org 0310

1 Personal Services and
2 Employee Benefits................... 00100 $16,956,925
3 Unclassified ............................ 09900 184,711
4 Current Expenses ...................... 13000 196,302
5 Repairs and Alterations .......... 06400 100
6 Equipment ................................ 07000 100
7 Buildings ................................. 25800 100
8 Capital Outlay – Parks (R)......... 28800 3,000,000
9 Litter Control
10 Conservation Officers ............. 56400 146,986
11 Upper Mud River Flood Control ... 65400 164,791
12 Other Assets ............................ 69000 100
13 Land (R) ................................. 73000 100
14 Law Enforcement ........................ 80600 2,552,994
15 BRIM Premium ....................... 91300 45,141
16 Total ..................................... $23,248,350

Any unexpended balances remaining in the appropriations for Buildings (fund 0265, appropriation 25800), Capital Outlay – Parks (fund 0265, appropriation 28800), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the Division of Natural Resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.
### 38-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2020 Org 0314

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100 $9,550,243</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>09900 111,016</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>13000 1,396,141</td>
</tr>
<tr>
<td>4</td>
<td>Coal Dust and</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Rock Dust Sampling</td>
<td>27000 487,752</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>91300 80,668</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is $500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.

### 39-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2020 Org 0319

|   | Description                                     | FY 2020   |   |
|---|-------------------------------------------------|-----------|
| 1 | Personal Services and Employee Benefits         | 00100 $233,981 |
| 2 | Unclassified                                    | 09900 3,480 |
| 3 | Current Expenses                                | 13000 118,138 |
| 4 | Total                                           |           |

Included in the above appropriation for Current Expenses (fund 0280, appropriation 13000) up to $29,000 shall be used for the Coal Mine Safety and Technical Review Committee.

### 40-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2020 Org 0323
1 Personal Services and
2 Employee Benefits............... 00100 $ 51,433
3 Unclassified ......................... 09900 593
4 Current Expenses ................... 13000 7,337
5 Total..................................... $ 59,363

41-Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2020 Org 0327

1 Personal Services and
2 Employee Benefits............... 00100 $ 588,872
3 Unclassified ......................... 09900 501,490
4 Current Expenses ................... 13000 17,099
5 Total..................................... $ 1,107,461

6 From the above appropriation for Unclassified (fund 0606, appropriation 09900), $500,000 shall be transferred to the Broadband Enhancement Fund (fund 3013).

42-Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2020 Org 0328

1 Personal Services and
2 Employee Benefits............... 00100 $ 198,299
3 Unclassified ......................... 09900 12,395
4 Current Expenses ................... 13000 1,029,679
5 BRIM Premium....................... 91300 3,894
6 Total..................................... $ 1,244,267

7 From the above appropriation for Current Expenses (fund 0612, appropriation 13000) $558,247 is for West Virginia University and $308,247 is for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.
43-State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2020 Org 0932

1. Personal Services and Employee Benefits .............. 00100 $11,459,977
2. Independent Living Services ............. 00900 429,418
3. Current Expenses ................................ 13000 558,815
4. Workshop Development .................. 16300 1,817,427
5. Supported Employment
6. Extended Services ..................... 20600 77,960
7. Ron Yost Personal Assistance Fund ......... 40700 333,828
8. Employment Attendant
9. Care Program .......................... 59800 131,575
10. BRIM Premium .......................... 91300 77,464
11. Total ....................................... $14,886,464

From the above appropriation for Workshop Development (fund 0310, appropriation 16300), fund shall be used exclusively with the private nonprofit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those organizations.

DEPARTMENT OF EDUCATION

44-State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2020 Org 0402
242 APPROPRIATIONS [Ch. 31

1 Personal Services and  
2 Employee Benefits............... 00100 $ 348,042  
3 Current Expenses................... 13000 2,118,865  
4 Total.................................. $ 2,466,907  

*NOTE: The Governor reduced Item 45, line 3, by $5,372,000, from $42,954,000 to $37,582,000. The total does not reflect the reductions made by the Governor.

45-State Board of Education –  
State Department of Education  
(WV Code Chapters 18 and 18A)  
Fund 0313 FY 2020 Org 0402

1 Personal Services and  
2 Employee Benefits............... 00100 $ 4,598,523  
3 Teachers’ Retirement  
4 Savings Realized.................. 09500 *37,582,000  
5 Unclassified (R).................... 09900 420,000  
6 Current Expenses (R).............. 13000 2,572,000  
7 Equipment............................ 07000 5,000  
8 Center for Professional  
9 Development (R)................. 11500 150,000  
10 Increased Enrollment............. 14000 3,060,000  
11 Safe Schools........................ 14300 4,781,026  
12 National Teacher  
13 Certification (R)............... 16100 300,000  
14 Jim’s Dream – Childhood  
15 Drug Prevention Education.... 21901 5,000,000  
16 Buildings (R)...................... 25800 1,000  
17 Allowance for County Transfer.... 26400 476,348  
18 Technology Repair  
19 and Modernization............ 29800 951,003  
20 HVAC Technicians............... 35500 516,791  
21 Early Retirement  
22 Notification Incentive.......... 36600 300,000  
23 MATH Program.................... 36800 336,532  
24 Assessment Programs............ 39600 1,339,588
<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Appropriation</th>
<th>Available Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>Benedum Professional Development Collaborative</td>
<td>42700</td>
<td>429,775</td>
</tr>
<tr>
<td>26</td>
<td>Governor’s Honors Academy</td>
<td>47800</td>
<td>1,059,270</td>
</tr>
<tr>
<td>27</td>
<td>21st Century Fellows</td>
<td>50700</td>
<td>274,899</td>
</tr>
<tr>
<td>28</td>
<td>English as a Second Language</td>
<td>52800</td>
<td>96,000</td>
</tr>
<tr>
<td>29</td>
<td>Teacher Reimbursement</td>
<td>57300</td>
<td>297,188</td>
</tr>
<tr>
<td>30</td>
<td>Hospitality Training</td>
<td>60000</td>
<td>272,775</td>
</tr>
<tr>
<td>31</td>
<td>Hi-Y Youth in Government</td>
<td>61600</td>
<td>100,000</td>
</tr>
<tr>
<td>32</td>
<td>High Acuity Special Needs (R)</td>
<td>63400</td>
<td>1,500,000</td>
</tr>
<tr>
<td>33</td>
<td>Foreign Student Education</td>
<td>63600</td>
<td>100,294</td>
</tr>
<tr>
<td>34</td>
<td>State Board of Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Administrative Costs</td>
<td>68400</td>
<td>277,403</td>
</tr>
<tr>
<td>36</td>
<td>Other Assets</td>
<td>69000</td>
<td>1,000</td>
</tr>
<tr>
<td>37</td>
<td>IT Academy (R)</td>
<td>72100</td>
<td>500,000</td>
</tr>
<tr>
<td>38</td>
<td>Land (R)</td>
<td>73000</td>
<td>1,000</td>
</tr>
<tr>
<td>39</td>
<td>Early Literacy Program</td>
<td>75600</td>
<td>5,705,624</td>
</tr>
<tr>
<td>40</td>
<td>School Based</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Truancy Prevention (R)</td>
<td>78101</td>
<td>2,032,238</td>
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<tr>
<td>42</td>
<td>Mastery Based Education</td>
<td></td>
<td>125,000</td>
</tr>
<tr>
<td>43</td>
<td>Communities in Schools (R)</td>
<td>78103</td>
<td>400,000</td>
</tr>
<tr>
<td>44</td>
<td>21st Century Learners (R)</td>
<td>88600</td>
<td>1,756,470</td>
</tr>
<tr>
<td>45</td>
<td>BRIM Premium</td>
<td>91300</td>
<td>342,859</td>
</tr>
<tr>
<td>46</td>
<td>21st Century Assessment and Professional Development</td>
<td>93100</td>
<td>2,006,978</td>
</tr>
<tr>
<td>47</td>
<td>21st Century Technology</td>
<td></td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Infrastructure Network</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Tools and Support</td>
<td>93300</td>
<td>7,636,586</td>
</tr>
<tr>
<td>50</td>
<td>Special Olympic Games</td>
<td>96600</td>
<td>25,000</td>
</tr>
<tr>
<td>51</td>
<td>Educational Program Allowance</td>
<td>99600</td>
<td>516,250</td>
</tr>
<tr>
<td>52</td>
<td>Total</td>
<td></td>
<td>93,218,420</td>
</tr>
</tbody>
</table>

The above appropriations include funding for the state board of education and their executive office.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional Development (fund 0313, appropriation 11500), National Teacher Certification (fund
0313, appropriation 16100), Buildings (fund 0313, appropriation 25800), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor’s Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), Land (fund 0313, appropriation 73000), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), and 21st Century Learners (fund 0313, appropriation 88600) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Teachers’ Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), $120,000 shall be for assisting low income students with AP exam fees.

The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

From the above appropriation for Educational Program Allowance (fund 0313, appropriation 99600), $100,000 shall be expended for Webster County Board of Education for Hacker Valley; $150,000 shall be for the Randolph County Board of Education for Pickens School; $100,000 shall be for the Preston County Board of Education for the Aurora School; $100,000 shall be for the Fayette County Board of Education for Meadow Bridge; and $66,250 is for Project Based Learning in STEM fields.
### 46-State Board of Education –
*Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

**Fund 0314 FY 2020 Org 0402**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2020 Org</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Special Education – Counties</td>
<td>15900</td>
<td>$7,271,757</td>
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<tr>
<td>Special Education – Institutions</td>
<td>16000</td>
<td>3,968,631</td>
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<tr>
<td>Education of Juveniles</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Held in Predispositional</td>
<td></td>
<td></td>
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<tr>
<td>Juvenile Detention Centers</td>
<td>30200</td>
<td>649,758</td>
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<tr>
<td>Education of Institutionalized Juveniles and Adults (R)</td>
<td>47200</td>
<td>20,474,233</td>
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<tr>
<td>Total</td>
<td></td>
<td>$32,364,379</td>
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</table>

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

### 47-State Board of Education –
*State Aid to Schools*

(WV Code Chapters 18 and 18A)

**Fund 0317 FY 2020 Org 0402**

<table>
<thead>
<tr>
<th>Description</th>
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<th>FY 2020 Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Other Current Expenses</td>
<td>02200</td>
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<tr>
<td>Advanced Placement</td>
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<td>Professional Educators</td>
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<td>Service Personnel</td>
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<td>Fixed Charges</td>
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<tr>
<td>Transportation</td>
<td>15400</td>
<td>75,457,864</td>
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</tbody>
</table>
7 Professional Student Support Services .................. 65500 40,513,635
8 Improved Instructional Programs .................. 15600 51,527,411
9 21st Century Strategic Technology Learning Growth.................. 93600 25,549,588
10 Teacher and Leader Induction .................. 93601 4,584,707
11 Basic Foundation Allowances .................. 1,666,517,754
12 Less Local Share .................................. (478,449,993)
13 Adjustments ....................................... (2,681,318)
14 Total Basic State Aid ............................. 1,185,386,443
15 Public Employees’ Insurance Matching ................. 01200 223,979,027
16 Teachers’ Retirement System .................. 01900 65,201,000
17 School Building Authority .................. 45300 24,000,000
18 Retirement Systems – Unfunded Liability ........... 77500 345,517,000
19 Total .............................................. $ 1,844,083,470

48-State Board of Education – Vocational Division
(WV Code Chapters 18 and 18A)

Fund 0390 FY 2020 Org 0402

1 Personal Services and Employee Benefits.................. 00100 $ 1,339,713
2 Unclassified ..................................... 09900 268,800
3 Current Expenses ............................... 13000 883,106
4 Wood Products – Forestry Vocational Program... 14600 78,691
5 Albert Yanni Vocational Program .................. 14700 132,123
6 Vocational Aid................................. 14800 23,997,756
7 Adult Basic Education .......................... 14900 5,195,128
8 Jim’s Dream........................................ 14901 6,000,000
9 Program Modernization .................. 30500 884,313
10 High School Equivalency Diploma Testing (R)......... 72600 803,397
15 FFA Grant Awards......................... 83900 11,496
16 Pre-Engineering
17 Academy Program ................... 84000 265,294
18 Total.......................................... $39,859,817

Any unexpended balance remaining in the appropriation for High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

49-State Board of Education –

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2020 Org 0403

1 Personal Services and
2 Employee Benefits.................. 00100 $11,379,675
3 Unclassified .............................. 09900 110,000
4 Current Expenses ..................... 13000 2,240,696
5 Repairs and Alterations............. 06400 164,675
6 Equipment ................................. 07000 77,000
7 Buildings (R)............................. 25800 45,000
8 Capital Outlay and Maintenance (R) 75500 520,000
9 BRIM Premium............................ 91300 140,842
10 Total........................................ $14,677,888

Any unexpended balances remaining in the appropriations for Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50-Division of Culture and History

(WV Code Chapter 29)
## Fund 0293 FY 2020 Org 0432

<table>
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<tr>
<th>Item Description</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>Current Expenses</td>
<td>13000</td>
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<td>Repairs and Alterations</td>
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<td>Equipment</td>
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<td>1</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>09900</td>
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<tr>
<td>WV Humanities Council</td>
<td>16800</td>
<td>250,000</td>
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<tr>
<td>Buildings (R)</td>
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<td>1</td>
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<tr>
<td>Other Assets</td>
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<td>Educational Enhancements</td>
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<td>573,500</td>
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<tr>
<td>Land (R)</td>
<td>73000</td>
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<tr>
<td>Culture and History Programming</td>
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<tr>
<td>Capital Outlay and Maintenance (R)</td>
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<td>Historical Highway Marker Program</td>
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<td>57,548</td>
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<td><strong>Total</strong></td>
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<td><strong>$5,275,381</strong></td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), Buildings (fund 0293, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), Land (fund 0293, appropriation 73000), and Capital Outlay and Maintenance (fund 0293, appropriation 75500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The Current Expense appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.
From the above appropriation for Educational Enhancements (fund 0293, appropriation 69500), $500,000 shall be used for Save the Children and $73,500 shall be used for the Clay Center.

51-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2020 Org 0433

<p>| | | |</p>
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<tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
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</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>13000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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<tr>
<td>4</td>
<td>Services to Blind &amp; Handicapped</td>
<td>18100</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>91300</td>
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</tbody>
</table>

52-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2020 Org 0439

<p>| | | |</p>
<table>
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<tr>
<th></th>
<th></th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>13000</td>
</tr>
<tr>
<td>3</td>
<td>Mountain Stage</td>
<td>24900</td>
</tr>
<tr>
<td>4</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>75500</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>91300</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.
### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 53-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2020 Org 0311

<table>
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<th>Item Description</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
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<td>Current Expenses</td>
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<td>$28,453</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$800</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>$500</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>$400</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>$791</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>$113,483</strong></td>
</tr>
</tbody>
</table>

#### 54-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2020 Org 0313

<table>
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<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
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<td>00100</td>
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<tr>
<td>Water Resources Protection and Management</td>
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<td>$576,278</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>$96,916</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>$1,500</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>$14,825</td>
</tr>
<tr>
<td>Dam Safety</td>
<td>60700</td>
<td>$237,824</td>
</tr>
<tr>
<td>West Virginia Stream</td>
<td>63700</td>
<td>$77,396</td>
</tr>
<tr>
<td>Meth Lab Cleanup</td>
<td>65600</td>
<td>$139,000</td>
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<tr>
<td>WV Contributions</td>
<td>77600</td>
<td>$148,485</td>
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<tr>
<td>Office of Water Resources</td>
<td>85500</td>
<td>$1,009,855</td>
</tr>
<tr>
<td>Non-Enforcement Activity</td>
<td></td>
<td><strong>$6,498,479</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>$6,498,479</strong></td>
</tr>
</tbody>
</table>
A portion of the appropriations for Current Expense (fund 0273, appropriation 13000) and Dam Safety (fund 0273, appropriation 60700) may be transferred to the special revenue fund Dam Safety Rehabilitation Revolving Fund (fund 3025) for the state deficient dams rehabilitation assistance program.

55-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2020 Org 0325

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
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<td>Repairs and Alterations</td>
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<td>800</td>
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<td>Equipment</td>
<td>07000</td>
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<td>Other Assets</td>
<td>69000</td>
<td>200</td>
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<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56-Department of Health and Human Resources –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2020 Org 0501

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<tr>
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<td>Current Expenses</td>
<td>13000</td>
<td>50,613</td>
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<td>Commission for the Deaf and Hard of Hearing</td>
<td>70400</td>
<td>225,534</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$667,244</strong></td>
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</table>
Any unexpended balance remaining in the appropriation for the Women’s Commission (fund 0400, appropriation 19100) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

57-Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
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<td>$12,946,328</td>
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<td>2</td>
<td>Chief Medical Examiner</td>
<td>04500</td>
<td>9,666,347</td>
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<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>671,795</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>4,877,059</td>
</tr>
<tr>
<td>5</td>
<td>State Aid for Local and Basic Public Health Services</td>
<td>18400</td>
<td>14,160,490</td>
</tr>
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<td>6</td>
<td>Safe Drinking Water Program (R)</td>
<td>18700</td>
<td>2,211,323</td>
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<td>7</td>
<td>Women, Infants and Children</td>
<td>21000</td>
<td>38,621</td>
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<tr>
<td>8</td>
<td>Early Intervention</td>
<td>22300</td>
<td>8,134,060</td>
</tr>
<tr>
<td>9</td>
<td>Cancer Registry</td>
<td>22500</td>
<td>206,306</td>
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<td>10</td>
<td>Office of Drug Control Policy (R)</td>
<td>35401</td>
<td>567,953</td>
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<td>11</td>
<td>Statewide EMS</td>
<td>38300</td>
<td>1,845,271</td>
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<tr>
<td>12</td>
<td>Program Support (R)</td>
<td>42001</td>
<td>2,380,489</td>
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<td>13</td>
<td>Office of Medical Cannabis</td>
<td>46700</td>
<td>170,885</td>
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<tr>
<td>14</td>
<td>Black Lung Clinics</td>
<td>55100</td>
<td>338,235</td>
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<td>15</td>
<td>Vaccine for Children</td>
<td>55300</td>
<td>379,256</td>
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<td>16</td>
<td>Tuberculosis Control</td>
<td>72300</td>
<td>125,000</td>
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<td>17</td>
<td>Maternal and Child Health Clinics, Clinicians</td>
<td>72700</td>
<td>3,750,000</td>
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<td>Item</td>
<td>Budget 2019</td>
<td>Budget 2020</td>
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<tr>
<td>Capital Outlay</td>
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<tr>
<td>and Maintenance (R)</td>
<td>75500</td>
<td>100,000</td>
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<td>Healthy Lifestyles</td>
<td>77800</td>
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<tr>
<td>Maternal Mortality Review</td>
<td>83400</td>
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<tr>
<td>Diabetes Education</td>
<td></td>
<td></td>
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<tr>
<td>and Prevention</td>
<td>87300</td>
<td>97,125</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>169,791</td>
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<td>State Trauma and Emergency Care System</td>
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<td>WVU Charleston Poison Control Hotline</td>
<td>94400</td>
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<td>$78,774,136</td>
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Any unexpended balances remaining in the appropriations for Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund 0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), 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 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

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; $50,000 is for Hospital Hospitality House of Huntington; and $200,000 is for Potomac Center Inc. of Romney, West Virginia.

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.

58-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund **0525** FY **2020** Org **0506**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<td>Current Expenses</td>
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<tr>
<td>Behavioral Health Program (R)</td>
<td>21900</td>
<td>71,843,953</td>
</tr>
<tr>
<td>Jim’s Dream</td>
<td>14901</td>
<td>9,000,000</td>
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<tr>
<td>Family Support Act</td>
<td>22100</td>
<td>251,226</td>
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<td>Institutional Facilities</td>
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<tr>
<td>Operations (R)</td>
<td>33500</td>
<td>137,929,180</td>
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<td>Substance Abuse</td>
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<tr>
<td>Continuum of Care (R)</td>
<td>35400</td>
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<td>Capital Outlay and Maintenance (R)</td>
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<td>$228,083,154</td>
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Any unexpended balances remaining in the appropriations for Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more
than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: Provided, however, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

Included in the above appropriation for Behavioral Health Program (fund 0525, appropriation 21900) is $100,000 for the Healing Place of Huntington.

The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) contains prior year salary increases due to the Hartley court order in the amount of $2,202,013 for William R. Sharpe Jr. Hospital, and $2,067,984 for Mildred Mitchel-Bateman Hospital.

From the above appropriation for Substance Abuse Continuum of Care (fund 0525, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

Additional funds have been appropriated in fund 5156, fiscal year 2020, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

59-Division of Health –

*West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2020 Org 0506

<table>
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<tr>
<th></th>
<th>68900</th>
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<tr>
<td>West Virginia Drinking Water Treatment</td>
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</table>
The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund as provided by Chapter 16 of the Code.

60-Human Rights Commission

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2020 Org</th>
<th>Personal Services and Employee Benefits</th>
<th>Unclassified</th>
<th>Current Expenses</th>
<th>BRIM Premium</th>
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<td>0510</td>
<td>00100 $1,073,553</td>
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61-Division of Human Services

(WV Code Chapters 9, 48 and 49)

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<th>Personal Services and</th>
<th>Child Care Development</th>
<th>Medical Services</th>
<th>Social Services</th>
<th>Family Preservation Program</th>
<th>Family Resource Networks</th>
<th>Domestic Violence</th>
<th>Legal Services Fund</th>
<th>James “Tiger” Morton Catastrophic Illness Fund</th>
<th>I/DD Waiver</th>
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<td>Indigent Burials (R)</td>
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<td>41</td>
<td>BRIM Premium</td>
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<td>43</td>
<td>Children’s Trust Fund – Transfer</td>
<td>95100</td>
<td>220,000</td>
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<td>Total</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0403, appropriation 75500) and Indigent Burials (fund 0403, appropriation 85100) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.
Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations:  

*Provided,* That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations:  

*Provided, however,* That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

The above appropriation for Domestic Violence Legal Services Fund (fund 0403, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The above appropriation for James “Tiger” Morton Catastrophic Illness Fund (fund 0403, appropriation 45500) shall be transferred to the James “Tiger” Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the Code.

The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the secretary of the Department of Health and Human Resources.
84 From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed $300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

89 From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be distributed according to the formula established by the Family Protection Services Board.

100 The above appropriation for Children’s Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children’s Trust Fund (fund 5469, org 0511).

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

62-Department of Military Affairs and Public Safety –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2020 Org 0601

1 Personal Services and
2 Employee Benefits .................. 00100 $ 672,826
3 Unclassified (R) ...................... 09900 18,949
4 Current Expenses .................... 13000 137,480
5 Repairs and Alterations ............. 06400 1,500
6 Equipment ............................ 07000 1,500
7 Fusion Center (R) .................... 46900 553,678
8 Other Assets................................. 69000  2,500
9 Directed Transfer ......................... 70000  32,000
10 BRIM Premium.............................. 91300  18,190
11 WV Fire and EMS
12 Survivor Benefit (R).................. 93900  200,000
13 Homeland State Security
14 Administrative Agency (R) .... 95300  315,220
15 Total........................................ $ 1,953,843

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Directed Transfer (fund 0430, appropriation 70000) shall be transferred to the Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

63-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2020 Org 0603

1 Unclassified (R)......................... 09900 $ 106,798
2 College Education Fund.............. 23200  4,000,000
3 Civil Air Patrol......................... 23400  249,664
4 Mountaineer ChalleNGe Academy... 70900  1,500,000
5 Armory Board Transfer ............... 70015  2,317,555
6 Military Authority (R)............. 74800  6,260,251
7 Drug Enforcement and Support .... 74801  1,500,000
8 Total.................................... $15,934,268
Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, appropriation 09900), Military Authority (fund 0433, appropriation 74800), and Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriations an amount approved by the Adjutant General and the secretary of Military Affairs and Public Safety may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

The adjutant general shall have the authority to transfer between appropriations.

From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than $4,500,000 to the Mountaineer ChalleNGe Academy to meet anticipated program demand.

64-Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2020 Org 0603

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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services and</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
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<td>3</td>
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65-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2020 Org 0605

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<td>Personal Services and</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$405,066</td>
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3 Current Expenses ......................... 13000 355,234
4 Unclassified .............................. 09900 10,000
5 Salaries of Members of
6 West Virginia Parole Board .... 22700 609,833
7 BRIM Premium ......................... 91300 6,149
8 Total ..................................... $ 1,386,282

The above appropriation for Salaries of Members of West Virginia Parole Board (fund 0440, appropriation 22700) includes funding for salary, annual increment (as provided for in W.Va. Code §5-5-1), and related employee benefits of board members.

66-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2020 Org 0606

1 Personal Services and
2 Employee Benefits .................... 00100 $ 1,572,931
3 Unclassified ............................. 09900 25,022
4 Current Expenses ...................... 13000 57,314
5 Repairs and Alterations ............. 06400 600
6 Radiological Emergency Preparedness .................. 55400 17,052
7 SIRN ..................................... 55401 600,000
8 Federal Funds/Grant Match (R) .... 74900 1,009,145
9 Mine and Industrial Accident Rapid Response Call Center .......... 78100 469,911
10 Early Warning Flood System (R) .. 87700 484,448
11 BRIM Premium ......................... 91300 96,529
12 Total ................................... $ 4,332,952

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year
2019 are hereby reappropriated for expenditure during the fiscal year 2020.

67-Division of Corrections and Rehabilitation –

Central Office

(WV Code Chapter 15A)

Fund 0446 FY 2020 Org 0608

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68-Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2020 Org 0608

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<td>Huttonsville Correctional Center</td>
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<td>Northern Correctional Center</td>
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<td>Inmate Medical Expenses (R)</td>
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<td>Pruntytown Correctional Center</td>
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<td>Corrections Academy</td>
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<td>Information Technology Services</td>
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<td>Martinsburg Correctional Center</td>
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17 Parole Services...............................  68600  5,641,740
18 Special Services .............................  68700  6,230,985
19 Investigative Services ....................  71600  3,301,523
20 Capital Outlay
21 and Maintenance (R) ......................  75500  7,000,000
22 Salem Correctional Center .............  77400  11,108,923
23 McDowell County
24 Correctional Center......................  79000  2,542,590
25 Stevens Correctional Center ..........  79100  7,863,195
26 Parkersburg Correctional Center....  82800  3,742,751
27 St. Mary’s Correctional Center......  88100  14,006,323
28 Denmar Correctional Center.........  88200  5,039,544
29 Ohio County Correctional Center ..  88300  2,003,675
30 Mt. Olive Correctional Complex ...  88800  21,709,603
31 Lakin Correctional Center ..........  89600  10,346,422
32 BRIM Premium............................  91300  2,527,657
33 Total..................................... $239,385,451

Any unexpended balances remaining in the appropriations for Children’s Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0450, appropriation 67700), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 0450, appropriation 75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations to the individual correctional units above and may transfer funds from the individual correctional units to Current
54 Expenses (fund 0450, appropriation 13000) or Inmate Medical Expenses (fund 0450, appropriation 53500).

56 From the above appropriation to Current Expenses (fund 0450, appropriation 13000) payment shall be made to house Division of Corrections and Rehabilitation inmates in federal, county, and/or regional jails.

60 Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

69-Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2020 Org 0608

<table>
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<th>Item</th>
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<td>1</td>
<td>Statewide Reporting Centers</td>
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<td>Robert L. Shell Juvenile Center</td>
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<td>3</td>
<td>Resident Medical Expenses (R)</td>
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<td>Central Office</td>
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<td>Capital Outlay</td>
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<td>6</td>
<td>and Maintenance (R)</td>
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<td>Gene Spadaro Juvenile Center</td>
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<td>Kenneth Honey Rubenstein</td>
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<td>Juvenile Center (R)</td>
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<td>Vicki Douglas Juvenile Center</td>
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<td>Lorrie Yeager Jr. Juvenile Center</td>
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<td>Sam Perdue Juvenile Center</td>
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<td>Tiger Morton Center</td>
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<td>17</td>
<td>Donald R. Kuhn Juvenile Center</td>
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<td>J.M. “Chick” Buckbee</td>
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<td>Juvenile Center</td>
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<td>$43,774,795</td>
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Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The Director of Juvenile Services shall have the authority to transfer between appropriations to the individual juvenile centers above including statewide reporting centers and central office and may transfer funds from the individual juvenile centers to Resident Medical Expenses (fund 0570, appropriation 53501).

70-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2020 Org 0612

1 Personal Services and
2 Employee Benefits.................. 00100 $ 62,755,235
3 Children’s Protection Act ........... 09000 1,009,529
4 Current Expenses.................... 13000 10,384,394
5 Repairs and Alterations............. 06400 450,523
6 Trooper Class (R).................... 52100 3,207,832
7 Barracks Lease Payments........... 55600 237,898
8 Communications and
9 Other Equipment (R).............. 55800 570,968
10 Trooper Retirement Fund.......... 60500 7,004,590
11 Handgun Administration Expense ... 74700 77,892
12 Capital Outlay
13 and Maintenance (R)............. 75500 250,000
14 Retirement Systems –
15 Unfunded Liability............... 77500 13,187,000
16 Automated Fingerprint
17 Identification System............ 89800 2,211,693
Any unexpended balances remaining in the appropriations for Trooper Class (fund 0453, appropriation 52100), Communications and Other Equipment (fund 0453, appropriation 55800), and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than $25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

71-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2020 Org 0619

Current Expenses ......................... 13000 $ 64,021

72-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2020 Org 0620

Personal Services and
Employee Benefits............... 00100 $ 570,979
Current Expenses ....................... 13000 133,360
Repairs and Alterations............ 06400 1,804
Child Advocacy Centers (R)....... 45800 2,206,954
Community Corrections (R)....... 56100 6,927,323
Statistical Analysis Program...... 59700 49,819
Sexual Assault Forensic
Examination Commission (R).... 71400 77,525
10 Qualitative Analysis and Training for Youth Services (R).............. 76200 332,446
11 Law Enforcement
12 Professional Standards.......... 83800 164,272
13 BRIM Premium..................... 91300 2,123
14 Total................................. $10,466,605

Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546 appropriation 71400), Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200), and Law Enforcement Professional Standards – Surplus (fund 0546, appropriation 83899) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

73-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2020 Org 0622

1 Personal Services and
2 Employee Benefits............... 00100 $ 3,029,459
3 Unclassified (R)................... 09900 21,991
4 Current Expenses................. 13000 443,357
5 Repairs and Alterations......... 06400 8,500
6 Equipment (R).................... 07000 64,171
7 BRIM Premium..................... 91300 12,226
8 Total................................. $ 3,579,704

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000), and Unclassified (fund 0585, appropriation 09900), are hereby reappropriated for expenditure during the fiscal year 2020.
12 09900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

74-Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2020 Org 0623

1 Personal Services and
2 Employee Benefits................. 00100 $ 2,306,255
3 Current Expenses..................... 13000 30,000
4 Total..................................... $ 2,336,255

DEPARTMENT OF REVENUE

75-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2020 Org 0701

1 Personal Services and
2 Employee Benefits................. 00100 $ 516,906
3 Unclassified*......................... 09900 5,837
4 Current Expenses..................... 13000 81,594
5 Repairs and Alterations............ 06400 1,262
6 Equipment.............................. 07000 8,000
7 Other Assets............................ 69000 500
8 Total..................................... $ 614,099

9 Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation*) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

*NOTE: The Governor deleted the “(R)” in Item 75, line 3, following the word Unclassified, and “09900” in line 11, following the word appropriation.
76-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2020 Org 0702

1  Personal Services and Employee Benefits (R) ............  00100  $ 19,272,541
2  Unclassified (R)....................................  09900  224,578
3  Current Expenses (R)...............................  13000  5,888,635
4  Repairs and Alterations.......................  06400  10,150
5  Equipment...........................................  07000  154,850
6  Tax Technology Upgrade ..................  09400  3,700,000
7  Multi State Tax Commission .........  65300  77,958
8  Other Assets....................................  69000  10,000
9  BRIM Premium....................................  91300  15,579
10 Total............................................. $ 29,354,291

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and Integrated Tax Assessment System (fund 0470, appropriation 29200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

77-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2020 Org 0703

1  Personal Services and Employee Benefits...............  00100  $ 694,942
2  Unclassified (R)....................................  09900  1,199
3  Total................................................. $ 696,141

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, appropriation
09900) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

78-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2020 Org 0709

1 Personal Services and
2 Employee Benefits................. 00100 $ 452,106
3 Current Expenses (R)................. 13000 93,022
4 Unclassified .......................... 09900 5,255
5 BRIM Premium.......................... 91300 3,062
6 Total.................................... $ 553,445

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

79-Division of Professional and Occupational Licenses – State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2020 Org 0933

1 Personal Services and
2 Employee Benefits.................... 00100 $ 7,200
3 Current Expenses ...................... 13000 29,611
4 Total.................................... $ 36,811

DEPARTMENT OF TRANSPORTATION

80-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2020 Org 0804
272 APPROPRIATIONS [Ch. 31

1 Personal Services and
2   Employee Benefits......................  00100 $  328,369
3 Current Expenses .........................  13000  287,707
4 Other Assets (R)..........................  69000  1,303,277
5 BRIM Premium..............................  91300   201,541
6   Total..................................... $ 2,120,894

7 Any unexpended balance remaining in the
8 appropriation Other Assets (fund 0506, appropriation
9 69000) at the close of the fiscal year 2019 is hereby
10 reappropriated for expenditure during the fiscal year 2020.

81-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2020 Org 0805

1 Equipment (R)..............................  07000 $  89,710
2 Current Expenses (R).......................  13000  2,173,279
3   Total..................................... $ 2,262,989

4 Any unexpended balances remaining in the
5 appropriations for Equipment (fund 0510, appropriation
6 07000), Current Expenses (fund 0510, appropriation
7 13000), Buildings (fund 0510, appropriation 25800), and
8 Other Assets (fund 0510, appropriation 69000) at the close
9 of the fiscal year 2019 are hereby reappropriated for
10 expenditure during the fiscal year 2020.

82-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2020 Org 0807

1 Personal Services and
2   Employee Benefits......................  00100 $  178,740
3 Current Expenses (R).......................  13000  591,839
4 Repairs and Alterations...................  06400    100
5 BRIM Premium..............................  91300   4,438
6   Total..................................... $  775,117
Any unexpended balances remaining in the appropriations for Unclassified (fund 0582, appropriation 09900) and Current Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

DEPARTMENT OF VETERANS’ ASSISTANCE

83-Department of Veterans’ Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2020 Org 0613

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<td>Veterans’ Toll Free</td>
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<td>Veterans’ Reeducation Assistance (R)</td>
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<td>Veterans’ Grant Program (R)</td>
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<td>560,000</td>
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<td>Veterans’ Grave Markers</td>
<td>47300</td>
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<td>Veterans’ Outreach Programs</td>
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<td>Memorial Day Patriotic Exercise</td>
<td>69700</td>
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<td>Veterans’ Cemetery</td>
<td>80800</td>
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<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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Any unexpended balances remaining in the appropriations for Veterans’ Nursing Home (fund 0456, appropriation 28600), Veterans’ Reeducation Assistance (fund 0456, appropriation 32900), Veterans’ Grant Program (fund 0456, appropriation 34200), Veterans’ Bonus –
24 Surplus (fund 0456, appropriation 34400), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

84-Department of Veterans’ Assistance –

Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2020 Org 0618

1 Personal Services and Employee Benefits ................... 00100 $ 1,217,096
2 Current Expenses ..................................... 13000 46,759
3 Total .................................................. $ 1,263,855

BUREAU OF SENIOR SERVICES

85-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2020 Org 0508

1 Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens ...... 53900 $ 29,950,955
2 The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.
3 The above appropriation is in addition to funding provided in fund 5405 for this program.
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

86-West Virginia Council for Community and Technical College Education – Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2020 Org 0420

1  West Virginia Council for Community and Technical Education (R)...... 39200  $ 738,955
2  Transit Training Partnership .......... 78300  34,293
3  Community College
4  Workforce Development (R)...... 87800  2,786,925
5  College Transition Program........... 88700  278,222
6  West Virginia Advance
7  Workforce Development (R)...... 89300  3,118,960
8  Technical Program
9  Development (R)..................... 89400  1,800,735
10  WV Invests Grant Program..........  #####  10,034,748
11  Total.........................................   $ 18,792,838

Any unexpended balances remaining in the appropriations for West Virginia Council for Community and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus (fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), and Technical Program Development (fund 0596, appropriation 89400) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for the Community College Workforce Development (fund 0596, appropriation
26 87800), $200,000 shall be expended on the Mine Training
27 Program in Southern West Virginia.

28 Included in the above appropriation for West Virginia
29 Advance Workforce Development (fund 0596,
30 appropriation 89300) is $200,000 to be used exclusively for
31 advanced manufacturing and energy industry specific
32 training programs.

87-Mountwest Community and Technical College
(WV Code Chapter 18B)
Fund 0599 FY 2020 Org 0444
1 Mountwest Community
2 and Technical College ............ 48700 $ 6,489,307

88-New River Community and Technical College
(WV Code Chapter 18B)
Fund 0600 FY 2020 Org 0445
1 New River Community
2 and Technical College ............ 35800 $ 5,864,886

89-Pierpont Community and Technical College
(WV Code Chapter 18B)
Fund 0597 FY 2020 Org 0446
1 Pierpont Community
2 and Technical College ............ 93000 $ 7,820,129

90-Blue Ridge Community and Technical College
(WV Code Chapter 18B)
Fund 0601 FY 2020 Org 0447
1 Blue Ridge Community
2 and Technical College ............ 88500 $ 7,830,842
91-West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2020 Org 0464

1. West Virginia University –
2. Parkersburg.......................... 47100 $ 10,319,284

92-Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2020 Org 0487

1. Southern West Virginia Community
2. and Technical College............ 44600 $ 8,241,823

93-West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2020 Org 0489

1. West Virginia Northern Community
2. and Technical College............ 44700 $ 7,285,825

94-Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2020 Org 0492

1. Eastern West Virginia Community
2. and Technical College............ 41200 $ 2,179,912

95-Bridge Valley Community and Technical College

(WV Code Chapter 18B)
### Higher Education Policy Commission

**Fund 0618 FY 2020 Org 0493**

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<th>Item Description</th>
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**Higher Education Policy Commission –**

- Administration –
- Control Account

(WV Code Chapter 18B)

**Fund 0589 FY 2020 Org 0441**

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<td>Higher Education Grant Program</td>
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<td>Tuition Contract Program (R)</td>
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<td>Underwood-Smith Scholarship Program-Student Awards</td>
<td>16700</td>
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<tr>
<td>Facilities Planning and Administration</td>
<td>38600</td>
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<td>Higher Education System Initiatives</td>
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<td>PROMISE Scholarship – Transfer.</td>
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<td>HEAPS Grant Program (R)</td>
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<td>Health Professionals’ Student Loan Program</td>
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<td>BRIM Premium</td>
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Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0589, appropriation 09700), Tuition Contract Program (fund 0589, appropriation 16500), Capital Improvements – Surplus (fund 0589, appropriation 66100), Capital Outlay and Maintenance (fund 0589, appropriation 75500), and
24 HEAPS Grant Program (fund 0589, appropriation 86700) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

27 The above appropriation for Facilities Planning and Administration (fund 0589, appropriation 38600) is for operational expenses of the West Virginia Education, Research and Technology Park between construction and full occupancy.

32 The above appropriation for Higher Education Grant Program (fund 0589, appropriation 16400) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by W.Va. Code §18C-5-3.

36 The above appropriation for Underwood-Smith Scholarship Program-Student Awards (fund 0589, appropriation 16700) shall be transferred to the Underwood-Smith Teacher Scholarship and Loan Assistance Fund (fund 4922, org 0441) established by W.Va. Code §18C-4-1.

41 The above appropriation for PROMISE Scholarship – Transfer (fund 0589, appropriation 80000) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

97-Higher Education Policy Commission –

Administration -

West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B)

Fund 0551 FY 2020 Org 0495

1 WVNET ............................................... 16900 $ 1,747,826

98-West Virginia University –

School of Medicine

Medical School Fund
A

PROPRIET

[Ch. 31 (WV Code Chapter 18B)]

Fund 0343 FY 2020 Org 0463

1 WVU School of Health Science –
2 Eastern Division ..................... 05600 $ 2,235,352
3 WVU – School of Health Sciences 17400 15,056,370
4 WVU – School of Health Sciences –
5 Charleston Division ................. 17500 2,286,711
6 Rural Health Outreach Programs ... 37700 164,517
7 West Virginia University
8 School of Medicine
9 BRIM Subsidy ....................... 46000 1,203,087
10 Total................................ ........................ $ 20,946,037

11 The above appropriation for Rural Health Outreach
12 Programs (fund 0343, appropriation 37700) includes rural
13 health activities and programs; rural residency development
14 and education; and rural outreach activities.

15 The above appropriation for West Virginia University
16 School of Medicine BRIM Subsidy (fund 0343,
17 appropriation 46000) shall be paid to the Board of Risk and
18 Insurance Management as a general revenue subsidy against
19 the “Total Premium Billed” to the institution as part of the
20 full cost of their malpractice insurance coverage.

99-West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2020 Org 0463

1 West Virginia University ............ 45900 $ 97,017,960
2 Jackson’s Mill ............................ 46100 491,458
3 West Virginia University
4 Institute of Technology ............ 47900 8,020,938
5 State Priorities – Brownfield
<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>6</td>
<td>Professional Development</td>
<td>53100</td>
<td>316,556</td>
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<td>7</td>
<td>Energy Express</td>
<td>86100</td>
<td>382,935</td>
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<td>8</td>
<td>West Virginia University –</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Potomac State</td>
<td>99400</td>
<td>4,512,711</td>
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<td>10</td>
<td>Total</td>
<td></td>
<td>$110,742,558</td>
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</tbody>
</table>

From the above appropriation for Jackson’s Mill (fund 0344, appropriation 46100) $250,000 shall be used for the West Virginia State Fire Training Academy.

### 100-Marshall University –

#### School of Medicine

(WV Code Chapter 18B)

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Marshall Medical School</td>
<td>17300</td>
<td>$12,235,068</td>
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<td>2</td>
<td>Rural Health</td>
<td></td>
<td></td>
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<td>3</td>
<td>Outreach Programs (R)</td>
<td>37700</td>
<td>156,022</td>
</tr>
<tr>
<td>4</td>
<td>Forensic Lab</td>
<td>37701</td>
<td>227,415</td>
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<tr>
<td>5</td>
<td>Center for Rural Health</td>
<td>37702</td>
<td>157,096</td>
</tr>
<tr>
<td>6</td>
<td>Marshall University Medical School</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>BRIM Subsidy</td>
<td>44900</td>
<td>872,612</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$13,648,213</td>
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</table>

Any unexpended balance remaining in the appropriation for Rural Health Outreach Program (fund 0347, appropriation 37700) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Rural Health Outreach Programs (fund 0347, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for Marshall University Medical School BRIM Subsidy (fund 0347, appropriation 44900) shall be paid to the Board of Risk and Insurance...
Management as a general revenue subsidy against the “Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.

101-Marshall University –

**General Administration Fund**

(WV Code Chapter 18B)

Fund 0348 FY 2020 Org 0471

| 1 | Marshall University  | 44800 | $46,761,199 |
| 2 | Luke Lee Listening   | 44801 | 99,015      |
| 3 | Language and Learning Lab. | 44801 | 99,015 |
| 4 | Vista E-Learning (R) | 51900 | 229,019 |
| 5 | State Priorities – Brownfield | 53100 | 309,606 |
| 6 | Marshall University Graduate College Writing Project (R) | 80700 | 25,412 |
| 7 | WV Autism Training Center (R) | 93200 | 1,808,381 |
| 8 | Total | | $49,232,632 |

Any unexpended balances remaining in the appropriations for Vista E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training Center (fund 0348, appropriation 93200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

102-West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2020 Org 0476

<p>| 1 | West Virginia School of Osteopathic Medicine  | 17200 | $8,879,296 |</p>
<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Rural Health Outreach Programs (R)</td>
<td>37700</td>
<td>166,111</td>
</tr>
<tr>
<td>West Virginia School of Osteopathic Medicine</td>
<td></td>
<td></td>
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<tr>
<td>BRIM Subsidy</td>
<td>40300</td>
<td>153,405</td>
</tr>
<tr>
<td>Rural Health Initiative – Medical Schools Support</td>
<td>58100</td>
<td>397,592</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 9,596,404</strong></td>
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</table>

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for West Virginia School of Osteopathic Medicine BRIM Subsidy (fund 0336, appropriation 40300) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.

103-Bluefield State College  
(WV Code Chapter 18B)

Fund 0354 FY 2020 Org 0482

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Bluefield State College</td>
<td>40800</td>
<td>6,383,221</td>
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104-Concord University  
(WV Code Chapter 18B)

Fund 0357 FY 2020 Org 0483

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Concord University</td>
<td>41000</td>
<td>10,476,415</td>
</tr>
</tbody>
</table>
105-Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2020 Org 0484

1 Fairmont State University .............. 41400 $18,600,341

106-Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2020 Org 0485

1 Glenville State College .................. 42800 $6,446,942

107-Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2020 Org 0486

1 Shepherd University ...................... 43200 $12,683,829

108-West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2020 Org 0488

1 West Liberty University .................. 43900 $9,102,662

109-West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2020 Org 0490

1 West Virginia State University...... 44100 $11,342,512
2 West Virginia State University
3 Land Grant Match....................... 95600 $2,950,192
4 Total........................................ $14,292,704
From the above appropriation for West Virginia State University (fund 0373, appropriation 44100), $300,000 shall be for the Healthy Grandfamilies program.

Total TITLE II, Section 1 – General Revenue (Including claims against the state) $ 4,635,887,842

Sec. 2. Appropriations from state road fund. — From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2020.

DEPARTMENT OF TRANSPORTATION

110-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2020 Org 0802

<table>
<thead>
<tr>
<th>State Appropriation</th>
<th>Road Fund</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
</tr>
<tr>
<td>Buildings</td>
<td>25800</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
</tr>
</tbody>
</table>

Total $46,077,719

111-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803
Debt Service...................................  04000 $ 89,000,000
Maintenance ...................................  23700 336,386,000
Nonfederal Improvements .............  23701 224,046,854
Inventory Revolving ......................  27500  4,000,000
Equipment Revolving ....................  27600 22,500,000
General Operations ........................  27700 91,663,229
Interstate Construction ...................  27800 90,000,000
Other Federal Aid Programs ..........  27900 370,000,000
Appalachian Programs...................  28000 100,000,000
Highway Litter Control..................  28200  1,719,000
Courtesy Patrol ..............................  28201  5,000,000
Total.........................................   $ 1,334,315,083

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17C of the code.

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.
112-Office of Administrative Hearings
(WV Code Chapter 17C)
Fund 9027 FY 2020 Org 0808

1. Personal Services and
2. Employee Benefits................. 00100 $ 1,698,752
3. Current Expenses.................... 13000 338,278
4. Repairs and Alterations............. 06400 3,000
5. Equipment............................. 07000 15,500
6. BRIM Premium.......................... 91300 10,000
7. Total................................... $ 2,065,530

8. Total TITLE II, Section 2 – State Road Fund
9. (Including claims
10. against the state)..................... $ 1,384,161,478

Sec. 3. Appropriations from other funds. — From the
funds designated there are hereby appropriated
conditionally upon the fulfillment of the provisions set forth
in Article 2, Chapter 11B of the Code the following
amounts, as itemized, for expenditure during the fiscal year
2020.

LEGISLATIVE

113-Crime Victims Compensation Fund
(WV Code Chapter 14)
Fund 1731 FY 2020 Org 2300

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Employee Benefits....</td>
<td>00100</td>
<td>$ 498,020</td>
</tr>
<tr>
<td>3 Current Expenses.....</td>
<td>13000</td>
<td>133,903</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>06400</td>
<td>1,000</td>
</tr>
<tr>
<td>5 Economic Loss........</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Claim Payment Fund...</td>
<td>33400</td>
<td>2,000,000</td>
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</tbody>
</table>
7 Other Assets............................... 69000 3,700
8 Total........................................ $ 2,636,623

**JUDICIAL**

*114-Supreme Court –*

*Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2020 Org 2400

1 Current Expenses......................... 13000 $ 1,050,000

*115-Supreme Court –*

*Court Advanced Technology Subscription Fund*

(WV Code Chapter 51)

Fund 1704 FY 2020 Org 2400

1 Current Expenses......................... 13000 $ 100,000

*116-Supreme Court –*

*Adult Drug Court Participation Fund*

(WV Code Chapter 62)

Fund 1705 FY 2020 Org 2400

1 Current Expenses......................... 13000 $ 200,000

**EXECUTIVE**

*117-Governor’s Office –*

*Minority Affairs Fund*

(WV Code Chapter 5)

Fund 1058 FY 2020 Org 0100
1 Personal Services and
2  Employee Benefits.................  00100 $ 177,737
3 Current Expenses ......................  13000 503,200
4 Martin Luther King, Jr.
5  Holiday Celebration...............  03100 8,926
6  Total...................................... $ 689,863

118-Auditor’s Office –

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2020 Org 1200

1 Personal Services and
2  Employee Benefits......................  00100 $ 799,211
3  Unclassified................................  09900 15,139
4 Current Expenses ......................  13000 715,291
5  Repairs and Alterations....................  06400 2,600
6  Equipment...................................  07000 426,741
7  Cost of Delinquent Land Sales ......  76800 1,341,168
8  Total...................................... $ 3,300,150

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

119-Auditor’s Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2020 Org 1200
1 Personal Services and
2 Employee Benefits............... 00100 $ 627,779
3 Current Expenses ................... 13000 282,030
4 Repairs and Alterations .......... 06400 6,000
5 Equipment ........................... 07000 10,805
6 Other Assets ......................... 69000 50,000
7 Statutory Revenue Distribution .... 74100 3,500,000
8 Total .................................. $ 4,476,614

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer of revenue distribution requirements to provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.Va. Code §6-9-2b.

120-Auditor’s Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2020 Org 1200

1 Personal Services and
2 Employee Benefits............... 00100 $ 2,487,017
3 Unclassified .......................... 09900 31,866
4 Current Expenses ................... 13000 1,463,830
5 Repairs and Alterations .......... 06400 12,400
6 Equipment ........................... 07000 394,700
7 Other Assets ......................... 69000 900,000
8 Total .................................. $ 5,289,813

121-Auditor’s Office – Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2020 Org 1200

1 Current Expenses .................... 13000 $ 10,000
Fifty percent of the deposits made into this fund shall be transferred to the Treasurer’s Office – Technology Support and Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.Va. Code §12-3-10c.

122 - Auditor’s Office –

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2020 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year 2020</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$2,824,837</td>
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<tr>
<td>3</td>
<td>Current Expenses</td>
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<td>$2,303,622</td>
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<td>4</td>
<td>Repairs and Alterations</td>
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<td>5</td>
<td>Equipment</td>
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<tr>
<td>6</td>
<td>Other Assets</td>
<td>69000</td>
<td>$308,886</td>
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<tr>
<td>7</td>
<td>Statutory Revenue Distribution</td>
<td>74100</td>
<td>$8,000,000</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$14,092,845</td>
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</table>

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer and revenue distribution requirements to the Purchasing Improvement Fund (fund 2264), the Hatfield-McCoy Regional Recreation Authority, and the State Park Operating Fund (fund 3265) per W.Va. Code §12-3-10d.

123 - Auditor’s Office –

Chief Inspector’s Fund

(WV Code Chapter 6)

Fund 1235 FY 2020 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year 2020</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$3,583,096</td>
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<tr>
<td></td>
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<tr>
<td>---</td>
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<tr>
<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>765,915</td>
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<td>4</td>
<td>Equipment</td>
<td>07000</td>
<td>50,000</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$ 4,399,011</td>
</tr>
</tbody>
</table>

**124-Auditor’s Office**

**Volunteer Fire Department Workers’ Compensation Premium Subsidy Fund**

(WV Code Chapters 12 and 33)

Fund 1239 FY 2020 Org 1200

1 Volunteer Fire
2 Department Workers’
3 Compensation Subsidy | 83200 | $ 2,500,000

**125-Treasurer’s Office**

**College Prepaid Tuition and Savings Program**

Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2020 Org 1300

1 Personal Services and Employee Benefits | 00100 | $ 810,372 |
2 Unclassified | 09900 | 14,000 |
3 Current Expenses | 13000 | 619,559 |
5 Total |                      | $ 1,443,931 |

**126-Department of Agriculture**

**Agriculture Fees Fund**

(WV Code Chapter 19)

Fund 1401 FY 2020 Org 1400

1 Personal Services and Employee Benefits | 00100 | $ 2,425,446 |
3 Unclassified ......................... 09900 37,425
4 Current Expenses ................... 13000 1,856,184
5 Repairs and Alterations .......... 06400 158,500
6 Equipment ........................... 07000 436,209
7 Other Assets ......................... 69000 10,000
8 Total .................................. $ 4,923,764

127-Department of Agriculture –

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2020 Org 1400

1 Personal Services and
2 Employee Benefits ............... 00100 $ 78,251
3 Unclassified ......................... 09900 10,476
4 Current Expenses ................... 13000 963,404
5 Total .................................. $ 1,052,131

128-Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2020 Org 1400

1 Personal Services and
2 Employee Benefits ............... 00100 $ 71,937
3 Unclassified ......................... 09900 2,100
4 Current Expenses ................... 13000 89,500
5 Repairs and Alterations .......... 06400 36,400
6 Equipment ........................... 07000 15,000
7 Total .................................. $ 214,937

8 The above appropriations shall be expended in
9 accordance with Article 26, Chapter 19 of the Code.
### 129-Department of Agriculture –

**Farm Operating Fund**

(WV Code Chapter 19)

Fund 1412 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services and</td>
<td>00100</td>
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<td>Employee Benefits</td>
</tr>
<tr>
<td>2. Unclassified</td>
<td>09900</td>
<td>15,173</td>
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</tr>
<tr>
<td>3. Current Expenses</td>
<td>13000</td>
<td>1,367,464</td>
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</tr>
<tr>
<td>4. Repairs and Alterations</td>
<td>06400</td>
<td>388,722</td>
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<tr>
<td>5. Equipment</td>
<td>07000</td>
<td>399,393</td>
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</tr>
<tr>
<td>6. Other Assets</td>
<td>69000</td>
<td>20,000</td>
<td></td>
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<tr>
<td>7. Land</td>
<td>73000</td>
<td>250,000</td>
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<td><strong>Total</strong></td>
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<td><strong>$3,059,244</strong></td>
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### 130-Department of Agriculture –

**Donated Food Fund**

(WV Code Chapter 19)

Fund 1446 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1. Personal Services and</td>
<td>00100</td>
<td>$1,030,451</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>2. Unclassified</td>
<td>09900</td>
<td>45,807</td>
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</tr>
<tr>
<td>3. Current Expenses</td>
<td>13000</td>
<td>3,410,542</td>
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</tr>
<tr>
<td>4. Repairs and Alterations</td>
<td>06400</td>
<td>128,500</td>
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<tr>
<td>5. Equipment</td>
<td>07000</td>
<td>10,000</td>
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</tr>
<tr>
<td>6. Other Assets</td>
<td>69000</td>
<td>27,000</td>
<td></td>
</tr>
<tr>
<td>7. Land</td>
<td>73000</td>
<td>250,000</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$4,902,300</strong></td>
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</table>

### 131-Department of Agriculture –

**Integrated Predation Management Fund**

(WV Code Chapter 7)

Fund 1465 FY 2020 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services and</td>
<td>00100</td>
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<td><strong>$3,059,244</strong></td>
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</table>
1 Current Expenses ....................... 13000 $ 112,500

132-Department of Agriculture –

*West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2020 Org 1400

1 Current Expenses ....................... 13000 $ 500,000

133-Department of Agriculture –

*Veterans and Warriors to Agriculture Fund*

(WV Code Chapter 19)

Fund 1483 FY 2020 Org 1400

1 Current Expenses ....................... 13000 $ 7,500

134-Department of Agriculture –

*State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2020 Org 1400

<table>
<thead>
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135-Attorney General –

*Antitrust Enforcement Fund*
(WV Code Chapter 47)

Fund 1507 FY 2020 Org 1500

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136-Attorney General –  

Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2020 Org 1500

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137-Attorney General –  

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2020 Org 1500

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138-Secretary of State –  

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2020 Org 1600
<table>
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<td>4</td>
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139-Secretary of State –

**General Administrative Fees Account**

(WV Code Chapters 3, 5, and 59)

**Fund 1617 FY 2020 Org 1600**

<table>
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<th>00100</th>
<th>$2,947,630</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$2,947,630</td>
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<td>Current Expenses</td>
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<td>5</td>
<td>Technology Improvements</td>
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**DEPARTMENT OF ADMINISTRATION**

140-Department of Administration –

**Office of the Secretary –**

**Tobacco Settlement Fund**

(WV Code Chapter 4)

**Fund 2041 FY 2020 Org 0201**

<table>
<thead>
<tr>
<th></th>
<th>Tobacco Settlement Securitization</th>
<th>65000</th>
<th>$80,000,000</th>
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</table>

141-Department of Administration –

**Office of the Secretary –**

**Employee Pension and Health Care Benefit Fund**

(WV Code Chapter 18)
**NOTE:** The Governor reduced Item 141, line 1, by $5,372,000, from $42,954,000 to $37,582,000.

### Fund 2044 FY 2020 Org 0201

<table>
<thead>
<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$37,582,000</td>
</tr>
</tbody>
</table>

The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – Teachers’ Accumulation Fund (fund 2600).

**142-Department of Administration –**

**Division of Finance –**

**Shared Services Section Fund**

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>500,000</td>
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<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$2,000,000</td>
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</table>

### Fund 2220 FY 2020 Org 0210

<table>
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<th>Code</th>
<th>Amount</th>
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<td>Current Expenses</td>
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<td>4</td>
<td>Repairs and Alterations</td>
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<tr>
<td>5</td>
<td>Equipment</td>
<td>07000</td>
<td>2,050,000</td>
</tr>
<tr>
<td>6</td>
<td>Other Assets</td>
<td>69000</td>
<td>1,045,000</td>
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<tr>
<td>7</td>
<td>Total</td>
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<td>$39,321,583</td>
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</table>

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the
Division of Information Services and Communications as provided by law.

Each spending unit operating from the General Revenue Fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

144-Division of Purchasing –
Vendor Fee Fund
(WV Code Chapter 5A)
Fund 2263 FY 2020 Org 0213

1 Personal Services and
2 Employee Benefits............... 00100 $ 741,589
3 Unclassified ....................... 09900 2,382
4 Current Expenses.................. 13000 208,115
5 Repairs and Alterations......... 06400 5,000
6 Equipment.......................... 07000 2,500
7 Other Assets....................... 69000 2,500
8 BRIM Premium..................... 91300 810
9 Total.................................... $ 962,896

145-Division of Purchasing –
Purchasing Improvement Fund
(WV Code Chapter 5A)
Fund 2264 FY 2020 Org 0213

1 Personal Services and
2 Employee Benefits............... 00100 $ 778,176
3 Unclassified ....................... 09900 5,562
4 Current Expenses.................. 13000 393,066
5 Repairs and Alterations......... 06400 500
6 Equipment.......................... 07000 500
### 146-Travel Management –

**Aviation Fund**

(WV Code Chapter 5A)

**Fund 2302 FY 2020 Org 0215**

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<th>Code</th>
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<td>1,175,237</td>
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<td>Equipment</td>
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<td>1,000</td>
</tr>
<tr>
<td>Buildings</td>
<td>25800</td>
<td>100</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>100</td>
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<tr>
<td>Land</td>
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<td>100</td>
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<td><strong>Total</strong></td>
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<td>$1,327,237</td>
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### 147-Fleet Management Division Fund

(WV Code Chapter 5A)

**Fund 2301 FY 2020 Org 0216**

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<td>Repairs and Alterations</td>
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<td>2,000</td>
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<tr>
<td><strong>Total</strong></td>
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### 148-Division of Personnel

(WV Code Chapter 29)

**Fund 2440 FY 2020 Org 0222**

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<tr>
<td>Other Assets</td>
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<tr>
<td>BRIM Premium</td>
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<tr>
<td><strong>Total</strong></td>
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<td>$1,179,154</td>
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</tbody>
</table>
1 Personal Services and  
2 Employee Benefits............... 00100 $ 4,760,683  
3 Unclassified ............................ 09900 51,418  
4 Current Expenses ...................... 13000 1,262,813  
5 Repairs and Alterations ............. 06400 5,000  
6 Equipment ............................ 07000 20,000  
7 Other Assets ........................... 69000 60,000  
8 Total .................................... $ 6,159,914  

9 The total amount of these appropriations shall be paid  
10 from a special revenue fund out of fees collected by the  
11 Division of Personnel.  

149-West Virginia Prosecuting Attorneys Institute  
(WV Code Chapter 7)  
Fund 2521 FY 2020 Org 0228  

<table>
<thead>
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<th>Item Description</th>
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<tbody>
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150-Office of Technology –  
Chief Technology Officer Administration Fund  
(WV Code Chapter 5A)  
Fund 2531 FY 2020 Org 0231  

<table>
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</table>
From the above fund, the provisions of W.Va. Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

**DEPARTMENT OF COMMERCE**

*151-Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2020 Org 0305

1 Personal Services and
2 Employee Benefits............... 00100 $ 1,574,177
3 Current Expenses .................. 13000 282,202
4 Repairs and Alterations.......... 06400 53,000
5 Equipment......................... 07000 300,000
6 Total................................... $ 2,209,379

*152-Division of Forestry – Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2020 Org 0305

1 Personal Services and
2 Employee Benefits............... 00100 $ 239,244
3 Current Expenses .................. 13000 87,036
4 Repairs and Alterations.......... 06400 11,250
5 Total................................... $ 337,530

*153-Division of Forestry – Severance Tax Operations*

(WV Code Chapter 11)
### Fund 3084 FY 2020 Org 0305

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154-Geological and Economic Survey –

**Geological and Analytical Services Fund**

(WV Code Chapter 29)

### Fund 3100 FY 2020 Org 0306

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The above appropriations shall be used in accordance with W.Va. Code §29-2-4.

155-West Virginia Development Office –

**Department of Commerce –**

**Marketing and Communications Operating Fund**

(WV Code Chapter 5B)

### Fund 3002 FY 2020 Org 0307

<table>
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<td><strong>Total</strong></td>
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</table>
### 156-West Virginia Development Office –
#### Office of Coalfield Community Development
(WV Code Chapter 5B)

Fund **3162 FY 2020 Org 0307**

<table>
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<td>2</td>
<td>Unclassified</td>
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<td>3</td>
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</tr>
<tr>
<td>5</td>
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### 157-West Virginia Development Office
#### Entrepreneurship and Innovation Investment Fund
(WV Code Chapter 5B)

Fund **3014 FY 2020 Org 0307**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Entrepreneurship and Innovation Investment Fund</td>
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<td>$500,000</td>
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### 158-Division of Labor –
#### HVAC Fund
(WV Code Chapter 21)

Fund **3186 FY 2020 Org 0308**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$300,000</td>
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<tr>
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<td>Unclassified</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>1,500</td>
</tr>
<tr>
<td>6</td>
<td>Buildings</td>
<td>25800</td>
<td>1,000</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
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<td>8</td>
<td>Total</td>
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</table>
### 159-Division of Labor –

**Contractor Licensing Board Fund**

(WV Code Chapter 21)

**Fund 3187 FY 2020 Org 0308**

<table>
<thead>
<tr>
<th>Item</th>
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<th>Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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### 160-Division of Labor –

**Elevator Safety Fund**

(WV Code Chapter 21)

**Fund 3188 FY 2020 Org 0308**

<table>
<thead>
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<th>Item</th>
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<th>Amount</th>
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<tbody>
<tr>
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<td>6</td>
<td>Buildings</td>
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<td>7</td>
<td>BRIM Premium</td>
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### 161-Division of Labor –

**Steam Boiler Fund**

(WV Code Chapter 21)

**Fund 3189 FY 2020 Org 0308**

<table>
<thead>
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<tr>
<td>6</td>
<td>Buildings</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>91300</td>
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<td>8</td>
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162-Division of Labor –  
**Crane Operator Certification Fund**  
(WV Code Chapter 21)  
Fund 3191 FY 2020 Org 0308

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<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
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<td>6</td>
<td>BRIM Premium</td>
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163-Division of Labor –  
**Amusement Rides and Amusement Attraction Safety Fund**  
(WV Code Chapter 21)  
Fund 3192 FY 2020 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>5</td>
<td>Buildings</td>
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<tr>
<td>6</td>
<td>BRIM Premium</td>
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164-Division of Labor –  
**Amusement Rides and Amusement Attraction Safety Fund**  
(WV Code Chapter 21)  
Fund 3193 FY 2020 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<td>4</td>
<td>Repairs and Alterations</td>
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<td>2,000</td>
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<td>5</td>
<td>Buildings</td>
<td>25800</td>
<td>1,000</td>
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<tr>
<td>6</td>
<td>BRIM Premium</td>
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<td>7</td>
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### Division of Labor –

#### State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3195 FY 2020 Org 0308

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<td>43,700</td>
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<td>Repairs and Alterations</td>
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<td>1,000</td>
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<tr>
<td>Buildings</td>
<td>25800</td>
<td>1,000</td>
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<tr>
<td>BRIM Premium</td>
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<td>3,404</td>
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<td><strong>Total</strong></td>
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<td><strong>$340,150</strong></td>
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### Division of Labor –

#### Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2020 Org 0308

<table>
<thead>
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<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>$1,500,000</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>227,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>28,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>15,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>8,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>$1,778,500</strong></td>
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</table>

### Division of Labor –

#### Bedding and Upholstery Fund

(WV Code Chapter 21)

Fund 3198 FY 2020 Org 0308

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>$150,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>2,000</td>
</tr>
</tbody>
</table>
4 Current Expenses ........................... 13000  43,000
5 Repairs and Alterations ................. 06400  2,000
6 Buildings ........................................ 25800  1,000
7 BRIM Premium .............................. 91300  2,000
8 Total.................................................  $ 200,000

167-Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2020 Org 0308

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

168-Division of Natural Resources –

License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2020 Org 0310

1 Wildlife Resources ............................. 02300 $ 7,090,036
2 Administration .................................. 15500  1,694,974
3 Capital Improvements and
4 Land Purchase (R) ............................ 24800  1,695,961
5 Law Enforcement .............................. 80600  7,027,929
6 Total............................................... $ 17,508,900

7 The total amount of these appropriations shall be paid
8 from a special revenue fund out of fees collected by the
9 Division of Natural Resources.

10 Any unexpended balance remaining in the
11 appropriation for Capital Improvements and Land Purchase
12 (fund 3200, appropriation 24800) at the close of the fiscal
13 year 2019 is hereby reappropriated for expenditure during
14 the fiscal year 2020.
169-Division of Natural Resources –  
Natural Resources Game Fish and Aquatic Life Fund  
(WV Code Chapter 22)  
Fund 3202 FY 2020 Org 0310  
1 Current Expenses ....................... 13000 $ 125,000 

170-Division of Natural Resources –  
Nongame Fund  
(WV Code Chapter 20)  
Fund 3203 FY 2020 Org 0310  
1 Personal Services and Employee Benefits ............... 00100 $ 688,103  
2 Current Expenses .................................. 13000 201,810  
3 Equipment ........................................... 07000 106,615  
4 Total ................................................. $ 996,528 

171-Division of Natural Resources –  
Planning and Development Division  
(WV Code Chapter 20)  
Fund 3205 FY 2020 Org 0310  
1 Personal Services and Employee Benefits ............... 00100 $ 457,738  
2 Current Expenses .................................. 13000 157,864  
3 Repairs and Alterations .............................. 06400 15,016  
4 Equipment ........................................... 07000 8,300  
5 Buildings ............................................ 25800 8,300  
6 Other Assets ....................................... 69000 2,000,000  
7 Land ................................................... 73000 31,700  
8 Total ................................................... $ 2,678,918
**172-Division of Natural Resources – Whitewater Study and Improvement Fund**

(WV Code Chapter 20)

Fund 3253 FY 2020 Org 0310

<table>
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<th>Code</th>
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<td>Equipment</td>
<td>07000</td>
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<td>$6,969</td>
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<tr>
<td>Total</td>
<td></td>
<td>$140,685</td>
</tr>
</tbody>
</table>

**173-Division of Natural Resources – Whitewater Advertising and Promotion Fund**

(WV Code Chapter 20)

Fund 3256 FY 2020 Org 0310

<table>
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<tr>
<th>Item Description</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
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<tr>
<td>Total</td>
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<td>$20,000</td>
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</table>

**174-Division of Miners’ Health, Safety and Training – Special Health, Safety and Training Fund**

(WV Code Chapter 22A)

Fund 3355 FY 2020 Org 0314

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
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<td>WV Mining Extension Service</td>
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<td>Unclassified</td>
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<tr>
<td>Directed Transfer</td>
<td>70000</td>
<td>$1,300,000</td>
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</table>
From the above appropriation for Directed Transfer (Fund 3355, appropriation 70000), $1,100,000 shall be transferred to the State Rail Authority – Commuter Rail Access Fund (fund 8402) and $200,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

175-Department of Commerce –

Office of the Secretary –

Broadband Enhancement Fund

Fund 3013 FY 2020 Org 0327

1 Current Expenses ......................... 13000 $ 1,780,000

176-Office of Energy –

Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2020 Org 0328

1 Energy Assistance – Total .......... 64700 $ 7,211

177-State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2020 Org 0932

1 Personal Services and
2 Employee Benefits ..................... 00100 $ 119,738
### DEPARTMENT OF EDUCATION

178-State Board of Education –

**Strategic Staff Development**

(WV Code Chapter 18)

Fund 3937 FY 2020 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$900,000</strong></td>
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179-State Board of Education –

**School Construction Fund**

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2020 Org 0402

<table>
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<th>Item Description</th>
<th>Code</th>
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<tbody>
<tr>
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<td>Directed Transfer</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$37,217,000</strong></td>
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</table>

The above appropriation for Directed Transfer (fund 3951, appropriation 70000) shall be transferred to the School Building Authority Fund (3959) for the administrative expenses of the School Building Authority.
### 180-School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2020 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<td>Repairs and Alterations</td>
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### DEPARTMENT OF ARTS, CULTURE, AND HISTORY

#### 181-Division of Culture and History – Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2020 Org 0432

<table>
<thead>
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<th>Description</th>
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<td>07000</td>
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<tr>
<td>Buildings</td>
<td>25800</td>
<td>1,000</td>
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<tr>
<td>Other Assets</td>
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<tr>
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### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 182-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2020 Org 0312

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### 183-Division of Environmental Protection – Hazardous Waste Management Fund

(WV Code Chapter 22)

**Fund 3023 FY 2020 Org 0313**

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<th>Code</th>
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<td>Equipment</td>
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<td>8,072</td>
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### 184-Division of Environmental Protection – Air Pollution Education and Environment Fund

(WV Code Chapter 22)

**Fund 3024 FY 2020 Org 0313**

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<thead>
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185-Division of Environmental Protection –

*Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2020 Org 0313

1. Personal Services and
2. Employee Benefits............... 00100  $ 1,627,573
3. Current Expenses .................. 13000  16,185,006
4. Repairs and Alterations.......... 06400  79,950
5. Equipment.......................... 07000  130,192
6. Other Assets...................... 69000  32,000
7. Total.................................. $ 18,054,721

186-Division of Environmental Protection –

*Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2020 Org 0313

1. Personal Services and
2. Employee Benefits............... 00100  $ 143,906
3. Current Expenses .................. 13000  356,094
4. Total.................................. $ 500,000

187-Division of Environmental Protection –

*Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2020 Org 0313

1. Personal Services and
2. Employee Benefits............... 00100  $ 3,498,896
3. Current Expenses .................. 13000  1,237,758
4. Repairs and Alterations.......... 06400  40,600
5. Equipment.......................... 07000  8,000
### 188-Division of Environmental Protection –

**Mining and Reclamation Operations Fund**

(WV Code Chapter 22)

**Fund 3324 FY 2020 Org 0313**

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### 189-Division of Environmental Protection –

**Underground Storage Tank Administrative Fund**

(WV Code Chapter 22)

**Fund 3325 FY 2020 Org 0313**

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### 190-Division of Environmental Protection –

**Hazardous Waste Emergency Response Fund**

(WV Code Chapter 22)

Fund 3331 FY 2020 Org 0313

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### 191-Division of Environmental Protection –

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 22)

Fund 3332 FY 2020 Org 0313

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<th>Item</th>
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### 192-Division of Environmental Protection –

**Solid Waste Enforcement Fund**

(WV Code Chapter 22)
### Fund 3333 FY 2020 Org 0313

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*193-Division of Environmental Protection – Air Pollution Control Fund (WV Code Chapter 22)*

### Fund 3336 FY 2020 Org 0313

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<tbody>
<tr>
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*194-Division of Environmental Protection – Environmental Laboratory Certification Fund (WV Code Chapter 22)*

### Fund 3340 FY 2020 Org 0313

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### Ch. 31 | Appropriations

<table>
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195-Division of Environmental Protection –

*Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2020 Org 0313

<table>
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196-Division of Environmental Protection –

*Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2020 Org 0313

<table>
<thead>
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197-Division of Environmental Protection –

*Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2020 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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### 198-Division of Environmental Protection –

**Mountaintop Removal Fund**

(WV Code Chapter 22)

Fund 3490 FY 2020 Org 0313

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<tbody>
<tr>
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<td>23,500</td>
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### 199-Oil and Gas Conservation Commission –

**Special Oil and Gas Conservation Fund**

(WV Code Chapter 22C)

Fund 3371 FY 2020 Org 0315

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### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

### 200-Division of Health –

**Ryan Brown Addiction Prevention and Recovery Fund**

(WV Code Chapter 19)

Fund 5111 FY 2020 Org 0506

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<thead>
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<tr>
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201-Division of Health –

The Vital Statistics Account

(WV Code Chapter 16)

Fund 5144 FY 2020 Org 0506

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202-Division of Health –

Hospital Services Revenue Account

Special Fund

Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2020 Org 0506

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<th>Description</th>
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The total amount of these appropriations shall be paid from the Hospital Services Revenue Account Special Fund created by W.Va. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities.

Additional funds have been appropriated in fund 0525, fiscal year 2020, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.
Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this fund or in connection with the appropriation designated Institutional Facilities Operations in the Consolidated Medical Service Fund (fund 0525, organization 0506).

203-Division of Health – Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2020 Org 0506

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204-Division of Health – The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2020 Org 0506

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205-Division of Health – Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2020 Org 0506

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### 206-Division of Health –
#### Lead Abatement Account

(WV Code Chapter 16)

**Fund 5204 FY 2020 Org 0506**

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### 207-Division of Health –
#### West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

**Fund 5214 FY 2020 Org 0506**

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<tr>
<td>3</td>
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<td>13000</td>
</tr>
<tr>
<td>4</td>
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<td></td>
</tr>
</tbody>
</table>

### 208-Division of Health –
#### Tobacco Control Special Fund

(WV Code Chapter 16)

**Fund 5218 FY 2020 Org 0506**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>13000</td>
</tr>
</tbody>
</table>

### 209-Division of Health –
#### Medical Cannabis Program Fund

(WV Code Chapter 16A)
Fund 5420 FY 2020 Org 0506

1. Personal Services and Employee Benefits 00100 $ 509,658
2. Current Expenses 13000 1,151,040
3. Other Assets 69000 895,000
4. Total $ 2,555,698

210-West Virginia Health Care Authority – Health Care Cost Review Fund (WV Code Chapter 16)

Fund 5375 FY 2020 Org 0507

1. Personal Services and Employee Benefits 00100 $ 1,345,380
2. Hospital Assistance 02500 50,000
3. Unclassified 09900 100
4. Current Expenses 13000 754,645
5. Repairs and Alterations 06400 500
6. Equipment 07000 300
7. Total $ 2,150,925

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.Va. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

211-West Virginia Health Care Authority – Certificate of Need Program Fund (WV Code Chapter 16)

Fund 5377 FY 2020 Org 0507

1. Personal Services and Employee Benefits 00100 $ 829,798
2. Current Expenses 13000 474,967
3. Total $ 1,304,765
212-Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2020 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Services</td>
<td>18900</td>
<td>$213,594,315</td>
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<tr>
<td>Administrative Costs</td>
<td>78900</td>
<td>$242,287</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$213,836,602</td>
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</table>

The above appropriation for Medical Services Administrative Costs (fund 5090, appropriation 78900) shall be transferred to a special revenue account in the treasury for use by the Department of Health and Human Resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia Medical Services Fund (fund 5084).

213-Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2020 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
<th>Appropriation</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$24,809,509</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>380,000</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$12,810,491</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$38,000,000</td>
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</tbody>
</table>

214-Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)
The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.Va. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for Medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the Division of Human Services accounts.

215-Division of Human Services –

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

216-Division of Human Services –

Domestic Violence Legal Services Fund

(WV Code Chapter 48)
217-Division of Human Services –  
West Virginia Works Separate State College Program Fund
(WV Code Chapter 9)
Fund 5467 FY 2020 Org 0511
1 Current Expenses ....................... 13000 $ 500,000

218-Division of Human Services –  
West Virginia Works Separate State Two-Parent Program Fund
(WV Code Chapter 9)
Fund 5468 FY 2020 Org 0511
1 Current Expenses ....................... 13000 $ 1,500,000

219-Division of Human Services –  
Marriage Education Fund
(WV Code Chapter 9)
Fund 5490 FY 2020 Org 0511
1 Personal Services and
2 Employee Benefits .................... 00100 $ 10,000
3 Current Expenses ....................... 13000 $ 25,000
4 Total ................................... $ 35,000

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

220-Department of Military Affairs and Public Safety –  
Office of the Secretary –  
Law-Enforcement, Safety and Emergency Worker
Funeral Expense Payment Fund
(WV Code Chapter 15)

Fund 6003 FY 2020 Org 0601

1  Current Expenses.........................  13000  $ 32,000

221-State Armory Board –
General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2020 Org 0603

1  Personal Services and
2   Employee Benefits.......................  00100  $ 1,681,247
3  Current Expenses..........................  13000  650,000
4  Repairs and Alterations..................  06400  385,652
5  Equipment..................................  07000  250,000
6  Buildings...................................  25800  770,820
7  Other Assets................................  69000  100,000
8  Land.......................................  73000  200,000
9  Total......................................  $ 4,037,719

From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).

222-Division of Homeland Security
And Emergency Management –
Statewide Interoperable Radio Network Account

(WV Code Chapter 15)

Fund 6208 FY 2020 Org 0606

1  Current Expenses.........................  13000  $ 80,000
223-Division of Homeland Security and Emergency Management –

West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2020 Org 0606

1 Current Expenses......................... 13000 $ 2,000,000

2 Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 6295, appropriation 09600) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

224-Division of Corrections and Rehabilitation –

Parolee Supervision Fees

(WV Code Chapter 15A)

Fund 6362 FY 2020 Org 0608

1 Personal Services and
2 Employee Benefits................. 00100 $ 1,087,848
3 Unclassified ......................... 09900 9,804
4 Current Expenses ................. 13000 758,480
5 Equipment ......................... 07000 30,000
6 Other Assets ....................... 69000 40,129
7 Total.................................. $ 1,926,261

225-Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2020 Org 0608

1 Personal Services and
2 Employee Benefits................. 00100 $ 506,450
### 226-West Virginia State Police –

**Motor Vehicle Inspection Fund**

(WV Code Chapter 17C)

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,907,726</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>1,488,211</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>204,500</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>3,770,751</td>
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<tr>
<td>Buildings</td>
<td>25800</td>
<td>534,000</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>5,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>302,432</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>69000</strong></td>
<td><strong>$8,212,620</strong></td>
</tr>
</tbody>
</table>

The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

### 227-West Virginia State Police –

**Forensic Laboratory Fund**

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$600,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>90,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>5,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>545,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>69000</strong></td>
<td><strong>$1,240,000</strong></td>
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</tbody>
</table>
### Drunk Driving Prevention Fund
(WV Code Chapter 15)

**Fund 6513 FY 2020 Org 0612**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$1,327,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>$3,491,895</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>$154,452</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,973,347</strong></td>
</tr>
</tbody>
</table>

The total amount of these appropriations shall be paid from the special revenue fund out of receipts collected pursuant to W.Va. Code §11-15-9a and 16 and paid into a revolving fund account in the State Treasury.

### Surplus Real Property Proceeds Fund
(WV Code Chapter 15)

**Fund 6516 FY 2020 Org 0612**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings</td>
<td>25800</td>
<td>$1,022,778</td>
</tr>
<tr>
<td>Land</td>
<td>73000</td>
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<tr>
<td>BRIM Premium</td>
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<td>$77,222</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,101,000</strong></td>
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</table>

### Surplus Transfer Account
(WV Code Chapter 15)

**Fund 6519 FY 2020 Org 0612**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$225,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$20,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>$250,000</td>
</tr>
<tr>
<td>Buildings</td>
<td>25800</td>
<td>$40,000</td>
</tr>
</tbody>
</table>
5 Other Assets.............................. 69000 45,000
6 BRIM Premium............................ 91300 5,000
7 Total...................................... $ 585,000

231-West Virginia State Police –
Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2020 Org 0612

1 Personal Services and
2 Employee Benefits............... 00100 $ 256,629
3 Current Expenses............... 13000 51,443
4 Repairs and Alterations........ 06400 500
5 Equipment............................... 07000 300,500
6 Other Assets......................... 69000 300,500
7 BRIM Premium......................... 91300 18,524
8 Total...................................... $ 928,096

232-West Virginia State Police –
Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2020 Org 0612

1 Current Expenses............... 13000 $ 8,300

233-West Virginia State Police –
State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2020 Org 0612

1 Current Expenses............... 13000 $ 160,000
2 Repairs and Alterations........ 06400 40,000
3 Total...................................... $ 200,000
234-Fire Commission –

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2020 Org 0619

1 Personal Services and
   2 Employee Benefits...............  00100 $ 3,480,533
   3 Unclassified ..........................  09900 3,800
   4 Current Expenses ..................  13000 1,249,550
   5 Repairs and Alterations ..........  06400 58,500
   6 Equipment ............................  07000 140,800
   7 BRIM Premium .......................  91300 62,000
   8 Total.................................... $ 4,995,183

235-Division of Justice and Community Services –

WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2020 Org 0620

1 Personal Services and
   2 Employee Benefits...............  00100 $ 161,923
   3 Unclassified ..........................  09900 750
   4 Current Expenses ..................  13000 1,846,250
   5 Repairs and Alterations ..........  06400 1,000
   6 Total.................................... $ 2,009,923

236-Division of Justice and Community Services –

Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2020 Org 0620

1 Personal Services and
   2 Employee Benefits...............  00100 $ 23,840
334 APPROPRIATIONS [Ch. 31

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>FY 2020 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
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<td>$1,478,135</td>
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<td>$1,501,975</td>
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</table>

237-Division of Justice and Community Services –

*Second Chance Driver’s License Program Account*

(WV Code Chapter 17B)

Fund 6810 FY 2020 Org 0620

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>FY 2020 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$25,000</td>
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</tbody>
</table>

DEPARTMENT OF REVENUE

238-Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2020 Org 0303

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>FY 2020 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
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<tr>
<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$614,775</td>
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<td>4</td>
<td>Equipment</td>
<td>07000</td>
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<td>Total</td>
<td></td>
<td>$3,362,032</td>
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</table>

239-Office of the Secretary –

*State Debt Reduction Fund*

(WV Code Chapter 29)

Fund 7007 FY 2020 Org 0701

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>FY 2020 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Directed Transfer</td>
<td>70000</td>
<td>$20,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Directed Transfer shall be transferred to the Consolidated Public Retirement Board – West Virginia Public Employees Retirement System Employers Accumulation Fund (fund 2510).
### 240-Tax Division –

**Cemetery Company Account**

(WV Code Chapter 35)

Fund 7071 FY 2020 Org 0702

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$25,928</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$7,717</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$33,645</strong></td>
</tr>
</tbody>
</table>

### 241-Tax Division –

**Special Audit and Investigative Unit**

(WV Code Chapter 11)

Fund 7073 FY 2020 Org 0702

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$696,428</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>$9,500</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$273,297</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$7,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>$5,000</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$991,225</strong></td>
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</table>

### 242-Tax Division –

**Wine Tax Administration Fund**

(WV Code Chapter 60)

Fund 7087 FY 2020 Org 0702

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$268,973</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$5,406</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$274,379</strong></td>
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</table>
### 243-Tax Division –

**Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund**

(WV Code Chapter 47)

Fund **7092 FY 2020 Org 0702**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>1300</td>
<td>$35,000</td>
</tr>
<tr>
<td>2 Equipment</td>
<td>07000</td>
<td>15,000</td>
</tr>
<tr>
<td>3 Total</td>
<td></td>
<td>$50,000</td>
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</tbody>
</table>

### 244-Tax Division –

**Local Sales Tax and Excise Tax Administration Fund**

(WV Code Chapter 11)

Fund **7099 FY 2020 Org 0702**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,543,527</td>
</tr>
<tr>
<td>2 Unclassified</td>
<td>09900</td>
<td>10,000</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>13000</td>
<td>784,563</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>06400</td>
<td>1,000</td>
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<tr>
<td>5 Equipment</td>
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<td>5,000</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$2,344,090</td>
</tr>
</tbody>
</table>

### 245-State Budget Office –

**Public Employees Insurance Reserve Fund**

(WV Code Chapter 11B)

Fund **7400 FY 2020 Org 0703**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Public Employees Insurance Reserve Fund – Transfer</td>
<td>90300</td>
<td>$6,800,000</td>
</tr>
</tbody>
</table>
The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

### 246-State Budget Office –

**Public Employees Insurance Agency**

**Financial Stability Fund**

(WV Code Chapter 11B)

Fund 7401 FY 2020 Org 0703

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retiree Premium Offset</td>
<td>80101</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>PEIA Reserve</td>
<td>80102</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$15,000,000</td>
</tr>
</tbody>
</table>

The above appropriation shall be transferred to special revenue funds to be utilized by the West Virginia Public Employees Insurance Agency for the purposes of permitting the PEIA Finance Board to offset $5 million in retiree premium increases. Additionally, $10 million will be put into a reserve fund to stabilize and preserve the future solvency of PEIA. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

### 247-Insurance Commissioner –

**Examination Revolving Fund**

(WV Code Chapter 33)

Fund 7150 FY 2020 Org 0704

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$748,764</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$1,357,201</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$3,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>$81,374</td>
</tr>
</tbody>
</table>
Buildings ........................................  25800  8,289
Other Assets ...................................  69000  11,426
Total............................................... $ 2,210,054

248-Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2020 Org 0704

1 Personal Services and
2 Employee Benefits............... 00100 $ 571,976
3 Current Expenses ................. 13000 202,152
4 Repairs and Alterations......... 06400  5,000
5 Equipment........................ 07000 34,225
6 Buildings........................... 25800  4,865
7 Other Assets....................... 69000  19,460
8 Total........................................ $ 837,678

249-Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2020 Org 0704

1 Personal Services and
2 Employee Benefits............... 00100 $24,169,021
3 Current Expenses ................. 13000 8,797,758
4 Repairs and Alterations......... 06400  68,614
5 Equipment........................ 07000 1,728,240
6 Buildings........................... 25800  25,000
7 Other Assets....................... 69000  340,661
8 Total........................................ $35,129,294

250-Insurance Commissioner –

Workers’ Compensation Old Fund
Fund 7162 FY 2020 Org 0704

1. Employee Benefits 01000 $50,000
2. Current Expenses 13000 $250,500,000
3. Total .......................... $250,550,000

251-Insurance Commissioner –
Workers’ Compensation Uninsured Employers’ Fund

Fund 7163 FY 2020 Org 0704

1. Current Expenses 13000 $15,000,000

252-Insurance Commissioner –
Self-Insured Employer Guaranty Risk Pool

Fund 7164 FY 2020 Org 0704

1. Current Expenses 13000 $9,000,000

253-Insurance Commissioner –
Self-Insured Employer Security Risk Pool

Fund 7165 FY 2020 Org 0704

1. Current Expenses 13000 $14,000,000

254-Municipal Bond Commission

Fund 7253 FY 2020 Org 0706
1 Personal Services and
2 Employee Benefits .................. 00100 $ 282,589
3 Current Expenses .................... 13000 144,844
4 Equipment .............................. 07000 100
5 Total ...................................... $ 427,533

255-Racing Commission –

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2020 Org 0707

1 Medical Expenses – Total ............ 24500 $ 57,000
2 The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.
3 No expenditures shall be made from this fund except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

256-Racing Commission –

Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2020 Org 0707

1 Personal Services and
2 Employee Benefits .................. 00100 $ 264,564
3 Current Expenses .................... 13000 93,335
4 Other Assets ............................ 69000 5,000
5 Total ...................................... $ 362,899

257-Racing Commission –

General Administration

(WV Code Chapter 19)
### Fund 7305 FY 2020 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1. Personal Services and Employee Benefits</td>
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<td>$2,352,306</td>
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<tr>
<td>2. Current Expenses</td>
<td>13000</td>
<td>566,248</td>
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<tr>
<td>3. Repairs and Alterations</td>
<td>06400</td>
<td>7,000</td>
</tr>
<tr>
<td>4. Other Assets</td>
<td>69000</td>
<td>50,000</td>
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<tr>
<td>5. Total</td>
<td></td>
<td><strong>$2,975,554</strong></td>
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</table>

258-Racing Commission –

*Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account*

(WV Code Chapter 19)

### Fund 7307 FY 2020 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
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<th>Amount</th>
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<td>200,000</td>
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<td>5. Total</td>
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<td><strong>$1,333,187</strong></td>
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</table>

259-Alcohol Beverage Control Administration –

*Wine License Special Fund*

(WV Code Chapter 60)

### Fund 7351 FY 2020 Org 0708

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
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<td>69,186</td>
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<td>3. Repairs and Alterations</td>
<td>06400</td>
<td>7,263</td>
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<tr>
<td>4. Equipment</td>
<td>07000</td>
<td>10,000</td>
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<tr>
<td>5. Buildings</td>
<td>25800</td>
<td>100,000</td>
</tr>
<tr>
<td>7. Other Assets</td>
<td>69000</td>
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<tr>
<td>8. Total</td>
<td></td>
<td><strong>$318,762</strong></td>
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</tbody>
</table>
To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

260-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2020 Org 0708

1 Personal Services and
2 Employee Benefits .................. 00100 $ 5,790,574
3 Current Expenses .................... 13000 2,890,577
4 Repairs and Alterations ............ 06400 91,000
5 Equipment .......................... 07000 108,000
6 Buildings ............................ 25800 375,100
7 Purchase of Supplies for Resale ... 41900 72,500,000
8 Transfer Liquor Profits and Taxes ... 42500 20,800,000
9 Other Assets ....................... 69000 125,100
10 Land ................................ 73000 100
11 Total ................................ $102,680,451

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

261-State Athletic Commission Fund

(WV Code Chapter 29)
### DEPARTMENT OF TRANSPORTATION

#### 262-Division of Motor Vehicles –

*Dealer Recovery Fund*

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund 8220 FY 2020 Org 0802</th>
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<tbody>
<tr>
<td><strong>Personal Services and</strong></td>
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<tr>
<td><strong>Employee Benefits</strong></td>
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<td><strong>Current Expenses</strong></td>
<td>13000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
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</table>

#### 263-Division of Motor Vehicles –

*Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

<table>
<thead>
<tr>
<th>Fund 8223 FY 2020 Org 0802</th>
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</thead>
<tbody>
<tr>
<td><strong>Current Expenses</strong></td>
<td>13000</td>
</tr>
</tbody>
</table>

#### 264-Division of Highways –

*A. James Manchin Fund*

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund 8319 FY 2020 Org 0803</th>
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<tbody>
<tr>
<td><strong>Personal Services and</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Employee Benefits</strong></td>
<td>00100</td>
</tr>
<tr>
<td><strong>Current Expenses</strong></td>
<td>13000</td>
</tr>
<tr>
<td><strong>Repairs and Alterations</strong></td>
<td>06400</td>
</tr>
<tr>
<td><strong>Equipment</strong></td>
<td>07000</td>
</tr>
<tr>
<td><strong>Other Assets</strong></td>
<td>69000</td>
</tr>
<tr>
<td><strong>BRIM Premium</strong></td>
<td>91300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>
1. **Current Expenses** .................................. 13000 $ 1,650,000

265-**State Rail Authority** –

*West Virginia Commuter Rail Access Fund*

(WV Code Chapter 29)

Fund 8402 FY 2020 Org 0804

1. **Current Expenses** .................................. 13000 $ 1,100,000

**DEPARTMENT OF VETERANS’ ASSISTANCE**

266-**Veterans’ Facilities Support Fund**

(WV Code Chapter 9A)

Fund 6703 FY 2020 Org 0613

1. **Current Expenses** .................................. 13000 $ 1,654,234
2. **Other Assets** .......................................... 69000 $ 10,000
3. **Total** .................................................. $ 1,664,234

267-**Department of Veterans’ Assistance** –

*WV Veterans’ Home* –

*Special Revenue Operating Fund*

(WV Code Chapter 9A)

Fund 6754 FY 2020 Org 0618

1. **Current Expenses** .................................. 13000 $ 700,000
2. **Repairs and Alterations** ......................... 06400 $ 50,000
3. **Total** .................................................. $ 750,000

**BUREAU OF SENIOR SERVICES**

268-**Bureau of Senior Services** –

*Community Based Service Fund*
Fund 5409 FY 2020 Org 0508

1 Personal Services and
2 Employee Benefits................. 00100 $ 160,883
3 Current Expenses ....................... 13000 10,348,710
4 Total..................................... $ 10,509,593

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

HIGHER EDUCATION POLICY COMMISSION

269-Higher Education Policy Commission –

System –

Tuition Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

Fund 4903 FY 2020 Org 0442

1 Debt Service............................... 04000 $ 27,713,123
2 General Capital Expenditures....... 30600 5,000,000
3 Facilities Planning
4 and Administration ...................... 38600 441,111
5 Total...................................... $ 33,154,234

The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.
The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

270-Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2020 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.Va. Code §18-12B-8, which have since been refunded.

271-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2020 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908, appropriation 95800) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.
The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical College Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

**272-West Virginia University –**

*West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2020 Org 0463

<table>
<thead>
<tr>
<th>Item</th>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
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<td>$10,764,347</td>
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<tr>
<td>2. Current Expenses</td>
<td>13000</td>
<td>4,524,300</td>
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<tr>
<td>3. Repairs and Alterations</td>
<td>06400</td>
<td>425,000</td>
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<tr>
<td>4. Equipment</td>
<td>07000</td>
<td>512,000</td>
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<tr>
<td>5. Buildings</td>
<td>25800</td>
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<tr>
<td>6. Other Assets</td>
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<td>50,000</td>
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<tr>
<td><strong>Total</strong></td>
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</table>

**MISCELLANEOUS BOARDS AND COMMISSIONS**

**273-Board of Barbers and Cosmetologists –**

*Barbers and Beauticians Special Fund*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2020 Org 0505

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
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<tr>
<td>2. Current Expenses</td>
<td>13000</td>
<td>239,969</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$783,962</strong></td>
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</table>

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.
274-Hospital Finance Authority –
Hospital Finance Authority Fund
(WV Code Chapter 16)
Fund 5475 FY 2020 Org 0509

1 Personal Services and
2 Employee Benefits................. 00100 $ 93,261
3 Unclassified .......................... 09900 1,450
4 Current Expenses .................... 13000 55,397
5 Total ..................................... $ 150,108

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

275-WV State Board of Examiners for
Licensed Practical Nurses –
Licensed Practical Nurses
(WV Code Chapter 30)
Fund 8517 FY 2020 Org 0906

1 Personal Services and
2 Employee Benefits................. 00100 $ 495,505
3 Current Expenses .................... 13000 107,700
4 Total ..................................... $ 603,205

276-WV Board of Examiners for
Registered Professional Nurses –
Registered Professional Nurses
(WV Code Chapter 30)
Fund 8520 FY 2020 Org 0907
<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and</td>
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<tr>
<td>Employee Benefits</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>3,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>25,000</td>
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<td>Other Assets</td>
<td>69000</td>
<td>4,500</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$1,645,767</strong></td>
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</table>

---

277-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2020 Org 0926

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$12,481,921</td>
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<tr>
<td>Employee Benefits</td>
<td>00100</td>
<td>$12,481,921</td>
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<tr>
<td>Unclassified</td>
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<td>147,643</td>
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<td>Current Expenses</td>
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<td>2,572,202</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
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<td>Equipment</td>
<td>07000</td>
<td>160,000</td>
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<td>Buildings</td>
<td>25800</td>
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<tr>
<td>PSC Weight Enforcement</td>
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<td>Debt Payment/Capital Outlay</td>
<td>52000</td>
<td>350,000</td>
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<tr>
<td>Land</td>
<td>73000</td>
<td>10</td>
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<tr>
<td>BRIM Premium</td>
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<td>172,216</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$20,544,654</strong></td>
</tr>
</tbody>
</table>

13 The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

17 The Public Service Commission is authorized to transfer up to $500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.
278—Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2020 Org 0926

1 Personal Services and  
2 Employee Benefits................. 00100 $ 294,658  
3 Unclassified .......................... 09900 3,851  
4 Current Expenses .................... 13000 93,115  
5 Repairs and Alterations............ 06400 4,000  
6 Total.................................. $ 395,624

7 The total amount of these appropriations shall be paid  
8 from a special revenue fund out of receipts collected for or  
9 by the Public Service Commission pursuant to and in the  
10 exercise of regulatory authority over pipeline companies as  
11 provided by law.

279—Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2020 Org 0926

1 Personal Services and  
2 Employee Benefits................. 00100 $ 2,377,514  
3 Unclassified .......................... 09900 29,233  
4 Current Expenses .................... 13000 577,557  
5 Repairs and Alterations............ 06400 23,000  
6 Equipment............................. 07000 50,000  
7 Total.................................. $ 3,057,304
The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

280-Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2020 Org 0926

1 Personal Services and
2 Employee Benefits................. 00100 $ 772,994
3 Current Expenses ................... 13000 276,472
4 Equipment ............................ 07000 9,872
5 BRIM Premium ...................... 91300 4,660
6 Total .................................. $ 1,063,998

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

281-Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2020 Org 0927

1 Personal Services and
2 Employee Benefits................. 00100 $ 607,098
3 Current Expenses ................... 13000 293,122
4 Repairs and Alterations............ 06400 2,500
5 Equipment ............................ 07000 5,000
6 Total .................................. $ 907,720

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.
### 282-WV Board of Examiners for Speech-Language Pathology and Audiology –

_Speech-Language Pathology and Audiology Operating Fund_

(WV Code Chapter 30)

Fund 8646 FY 2020 Org 0930

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>FY 2020 Budget</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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### 283-WV Board of Respiratory Care –

_Board of Respiratory Care Fund_

(WV Code Chapter 30)

Fund 8676 FY 2020 Org 0935

<table>
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<tr>
<th>Item</th>
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<th>Account</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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### 284-WV Board of Licensed Dietitians –

_Dietitians Licensure Board Fund_

(WV Code Chapter 30)

Fund 8680 FY 2020 Org 0936

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>FY 2020 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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285-Massage Therapy Licensure Board –  
*Massage Therapist Board Fund*  
(WV Code Chapter 30)  
Fund 8671 FY 2020 Org 0938

<table>
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<tr>
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<th>Code</th>
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<tr>
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</table>

286-Board of Medicine –  
*Medical Licensing Board Fund*  
(WV Code Chapter 30)  
Fund 9070 FY 2020 Org 0945

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<tr>
<td>Current Expenses</td>
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<td>$8,000</td>
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<td>$2,495,596</td>
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287-West Virginia Enterprise Resource Planning Board –  
*Enterprise Resource Planning System Fund*  
(WV Code Chapter 12)  
Fund 9080 FY 2020 Org 0947

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
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<td>$232,000</td>
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<tr>
<td>Unclassified</td>
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<td>$232,000</td>
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<tr>
<td>Current Expenses</td>
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</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
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<td>Equipment</td>
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<td>$2,213,000</td>
</tr>
<tr>
<td>Buildings</td>
<td>25800</td>
<td>$2,000</td>
</tr>
</tbody>
</table>
8 Other Assets............................... 69000  199,500
9 Total......................................... $ 25,143,173

288-Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2020 Org 0950

1 Personal Services and
2 Employee Benefits..................... 00100 $ 782,889
3 Unclassified ............................. 09900  14,850
4 Current Expenses ....................... 13000  650,714
5 BRIM Premium........................... 91300  36,547
6 Fees of Custodians, Fund Advisors
7 and Fund Managers .................... 93800  3,500,000
8 Total....................................... $ 4,985,000

9 There is hereby appropriated from this fund, in addition
to the above appropriation if needed, an amount of funds
necessary for the Board of Treasury Investments to pay the
fees and expenses of custodians, fund advisors and fund
managers for the consolidated fund of the State as provided
in Article 6C, Chapter 12 of the Code.

10 The total amount of these appropriations shall be paid
11 from the special revenue fund out of fees and collections as
12 provided by law.

13 Total TITLE II, Section 3 – Other Funds
14 (Including claims
15 against the state)....................... $ 1,525,022,363

1 Sec. 4. Appropriations from lottery net profits. —
2 Net profits of the lottery are to be deposited by the Director
3 of the Lottery to the following accounts in the amounts
4 indicated. The Director of the Lottery shall prorate each
5 deposit of net profits in the proportion the appropriation for
each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the Director of the Lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 for that purpose. Upon receipt of reimbursement of amounts so transferred, the Director of the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

289-Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2020 Org 0211

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service – Total</td>
<td>$10,000,000</td>
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</tbody>
</table>

290-West Virginia Development Office –

West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 3067 FY 2020 Org 0304

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Tourism – Telemarketing Center</td>
<td>$82,080</td>
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<tr>
<td>Tourism – Advertising (R)</td>
<td>2,422,407</td>
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<tr>
<td>Tourism – Operations (R)</td>
<td>4,227,938</td>
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<tr>
<td>Total</td>
<td>$6,732,425</td>
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</table>
Any unexpended balances remaining in the appropriations for Tourism – Advertising (fund 3067, appropriation 61800), and Tourism – Operations (fund 3067, appropriation 66200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

291-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2020 Org 0310

1 Personal Services and
2 Employee Benefits ...................  00100 $ 2,428,178
3 Current Expenses .......................  13000  26,900
4 Pricketts Fort State Park ............  32400  106,560
5 Non-Game Wildlife (R) ..............  52700  386,935
6 State Parks and
7 Recreation Advertising (R).....  61900  494,578
8 Total...................................   $ 3,443,151

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, appropriation 09900), Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

292-State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2020 Org 0402

1 FBI Checks .................................  37200 $ 116,548
2 Vocational Education
3 Equipment Replacement.............  39300  800,000
4 Assessment Program (R) ..........  39600  3,016,444
Literacy Project .................................. 89900  350,000
21st Century Technology Infrastructure
Network Tools and Support (R)..... 93300  14,600,383
Total.............................................. $ 18,883,375

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, appropriation 09900), Current Expenses (fund 3951, appropriation 13000), Assessment Program (fund 3951, appropriation 39600), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, appropriation 93300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

293-State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2020 Org 0402

<table>
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<th>Line</th>
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<tr>
<td>1</td>
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<td>2</td>
<td>Directed Transfer</td>
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<td>3</td>
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The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

294-Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2020 Org 0432

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<tr>
<td>1</td>
<td>Huntington Symphony</td>
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<td>2</td>
<td>Preservation WV (R)</td>
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<td>Item</td>
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<td>Fairs and Festivals (R)</td>
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<td>Commission for National and Community Service</td>
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<td>Archeological Curation/</td>
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<td>West Virginia State Fair</td>
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<td>Save the Music</td>
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<td>Independence Hall</td>
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<td>WV Symphony</td>
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<td>Wheeling Symphony</td>
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<tr>
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<td>Total</td>
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<td>4,115,157</td>
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</table>

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette) $2,673, Aracoma Story (Logan) $29,703, Arts Monongahela (Monongalia) $11,881, Barbour County Arts and Humanities Council $891, Beckley Main Street (Raleigh) $2,970, Buffalo Creek Memorial (Logan) $2,970, Carnegie Hall (Greenbrier) $46,899, Ceredo Historical Society (Wayne) $1,188, Ceredo Kenova Railroad Museum (Wayne) $1,188, Ceredo Museum (Wayne) $720, Children’s Theatre of Charleston (Kanawha) $3,127, Chuck Mathena Center (Mercer) $62,532, Collis P. Huntington Railroad Historical Society (Cabell) $5,941, Country Music Hall of Fame and Museum (Marion) $4,159, First Stage Children’s Theater Company $1,188, Flannigan Murrell House (Summers) $3,781, Fort
Ashby Fort (Mineral) $891, Fort New Salem (Harrison) $2,198, Fort Randolph (Mason) $2,970, General Adam Stephen Memorial Foundation (Berkeley) $11,006, Grafton Mother’s Day Shrine Committee (Taylor) $5,049, Hardy County Tour and Crafts Association $11,881, Heartwood in the Hills (Calhoun) $5,040, Heritage Farm Museum & Village (Cabell) $29,703, Historic Fayette Theater (Fayette) $3,267, Historic Middleway Conservancy (Jefferson) $594, Jefferson County Black History Preservation Society $2,970, Jefferson County Historical Landmark Commission $4,753, Maddie Carroll House (Cabell) $4,455, Marshall County Historical Society $5,049, McCoy Theater (Hardy) $11,881, Morgantown Theater Company (Monongalia) $11,881, Mountaineer Boys’ State (Lewis) $5,941, Nicholas Old Main Foundation (Nicholas) $1,188, Norman Dillon Farm Museum (Berkeley) $5,941, Old Opera House Theater Company (Jefferson) $8,911, Parkersburg Arts Center (Wood) $11,881, Pocahontas Historic Opera House $3,564, Raleigh County All Wars Museum $5,941, Rhododendron Girl’s State (Ohio) $5,941, Roane County 4-H and FFA Youth Livestock Program $2,970, Scottish Heritage Society/N. Central WV (Harrison) $2,970, Society for the Preservation of McGrew House (Preston) $2,079, Southern West Virginia Veterans’ Museum $3,393, Summers County Historic Landmark Commission $2,970, Those Who Served War Museum (Mercer) $2,376, Three Rivers Avian Center (Summers) $5,311, Tug Valley Arts Council (Mingo) $2,970, Tug Valley Chamber of Commerce Coal House (Mingo) $1,188, Tunnelton Historical Society (Preston) $1,188, Veterans Committee for Civic Improvement of Huntington (Wayne) $2,970, West Virginia Museum of Glass (Lewis) $2,970, West Virginia Music Hall of Fame (Kanawha) $20,792, YMCA Camp Horseshoe (Tucker) $59,406, Youth Museum of Southern West Virginia (Raleigh) $7,129, Z.D. Ramsdell House (Wayne) $720.
From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to the A Princeton 4th (Mercer) $1,800, African-American Cultural Heritage Festival (Jefferson) $2,970, Alderson 4th of July Celebration (Greenbrier) $2,970, Allegheny Echo (Pocahontas) $4,456, Alpine Festival/Leaf Peepers Festival (Tucker) $6,683, American Civil War (Grant) $3,127, American Legion Post 8 Veterans Day Parade (McDowell) $1,250, Angus Beef and Cattle Show (Lewis) $891, Annual Birch River Days (Nicholas) $1,296, Annual Don Redman Heritage Concert & Awards (Jefferson) $938, Annual Ruddles Park Jamboree (Pendleton) $4,690, Antique Market Fair (Lewis) $1,188, Apollo Theater-Summer Program (Berkeley) $1,188, Apple Butter Festival (Morgan) $3,564, Arkansaw Homemaker’s Heritage Weekend (Hardy) $2,079, Armed Forces Day-South Charleston (Kanawha) $1,782, Arturdale Heritage New Deal Festival (Preston) $2,970, Athens Town Fair (Mercer) $1,188, Autumn Fair (Randolph) $2,970, Autumn Harvest Fest (Monroe) $2,448, Barboursville Fair $14,851, Barbour County Fair Octoberfest (Cabell) $2,970, Bass Festival (Pleasants) $1,099, Battelle District Fair (Monongalia) $2,970, Battle of Dry Creek (Greenbrier) $891, Battle of Point Pleasant Memorial Committee (Mason) $2,970, Belle Town Fair (Kanawha) $2,673, Belleville Homecoming (Wood) $11,881, Bergoo Down Home Days (Webster) $1,485, Berkeley County Youth Fair $10,990, Black Bear 4K Mountain Bike Race (Kanawha) $684, Black Heritage Festival (Harrison) $3,564, Black Walnut Festival (Roane) $5,940, Blast from the Past (Upshur) $1,440, Blue-Gray Reunion (Barbour) $2,079, Boone County Fair $5,940, Boone County Labor Day Celebration $2,376, Bradshaw Fall Festival (McDowell) $1,188, Brandonville Heritage Day (Preston) $1,048, Braxton County Fair $6,832, Braxton County Monster Fest / West Virginia Autumn Festival $1,485, Brooke County Fair $2,079, Bruceton Mills Good Neighbor Days (Preston) $1,188, Buckwheat Festival (Preston) $5,050, Buffalo 4th of July Celebration (Putnam) $400, Buffalo October Fest (Putnam) $3,240,
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<td>Burlington Apple Harvest Festival (Mineral)</td>
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<td>Cabell County Fair</td>
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<td>Calhoun County Wood Festival</td>
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<td>Campbell’s Creek Community Fair (Kanawha)</td>
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<td>Cape Coalwood Festival Association (McDowell)</td>
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<td>Capon Bridge Founders Day Festival (Hampshire)</td>
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<td>Capon Springs Ruritan 4th of July (Hampshire)</td>
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<tr>
<td>Cass Homecoming (Pocahontas)</td>
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<tr>
<td>Cedarville Town Festival (Gilmer)</td>
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<tr>
<td>Celebration in the Park (Wood)</td>
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<tr>
<td>Celebration of America (Monongalia)</td>
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<td>Ceredo Freedom Festival (Wayne)</td>
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<td>Chapmanville Apple Butter Festival (Logan)</td>
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<td>Chapmanville Fire Department 4th of July (Logan)</td>
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<td>Chester Fireworks (Hancock)</td>
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<td>Chief Logan State Park-Civil War Celebration (Logan)</td>
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<td>Chilifest West Virginia State Chili Championship (Cabell)</td>
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<td>Christmas In Our Town (Marion)</td>
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<td>Christmas in Shepherdstown (Jefferson)</td>
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<td>Culturefest World Music &amp; Arts Festival (Mingo)</td>
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Safety Day (Preston) $1,188, Farmer’s Day Festival (Monroe) $2,330, Farmers’ Day Parade (Wyoming) $720, Fenwick Mountain Old Time Community Festival (Nicholas) $2,880, FestivALL Charleston (Kanawha) $11,881, Flatwoods Days (Braxton) $700, Flemington Day Fair and Festival (Taylor) $2,079, Follansbee Community Days (Brooke) $4,900, Fort Gay Mountain Heritage Days (Wayne) $2,970, Fort Henry Days (Ohio) $3,148, Fort Henry Living History (Ohio) $1,563, Fort New Salem Spirit of Christmas Festival (Harrison) $2,432, Frankford Autumnfest (Greenbrier) $2,970, Franklin Fishing Derby (Pendleton) $4,456, Freshwater Folk Festival (Greenbrier) $2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) $2,970, Frontier Days (Harrison) $1,782, Frontier Fest/Canaan Valley (Taylor) $1,500, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) $1,485, Gassaway Days Celebration (Braxton) $2,970, Gilbert Elementary Fall Blast (Mingo) $2,188, Gilbert Kiwanis Harvest Festival (Mingo) $2,376, Gilbert Spring Fling (Mingo) $3,595, Gilmer County Farm Show $2,376, Grant County Arts Council $1,188, Grape Stomping Wine Festival (Nicholas) $1,188, Great Greenbrier River Race (Pocahontas) $5,940, Greater Quinwood Days (Greenbrier) $781, Guyandotte Civil War Days (Cabell) $5,941, Hamlin 4th of July Celebration (Lincoln) $2,970, Hampshire Civil War Celebration Days (Hampshire) $684, Hampshire County 4th of July Celebration $11,881, Hampshire County Fair $5,002, Hampshire Heritage Days (Hampshire) $2,376, Hancock County Oldtime Fair $2,970, Hardy County Commission - 4th of July $5,940, Hatfield McCoy Matewan Reunion Festival (Mingo) $12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) $2,970, Heat’n the Hills Chilifest (Lincoln) $2,970, Heritage Craft Festival (Monroe) $1,044, Heritage Days Festival (Roane) $891, Hilltop Festival (Cabell) $684, Hilltop Festival of Lights (McDowell) $1,188, Hinton Railroad Days (Summers) $4,347, Holly River Festival (Webster) $891, Hometown Mountain Heritage Festival (Fayette) $2,432, Hundred 4th of July (Wetzel).
$4,307, Hundred American Legion Earl Kiger Post
Bluegrass Festival (Wetzel) $1,188, Hurricane 4th of July
Celebration (Putnam) $2,970, Iaeger Town Fair
(McDowell) $891, Irish Heritage Festival of West Virginia
(Raleigh) $2,970, Irish Spring Festival (Lewis) $684,
Italian Heritage Festival-Clarksburg (Harrison) $17,821,
Jackson County Fair $2,970, Jamboree (Pocahontas)
$2,970, Jane Lew Arts and Crafts Fair (Lewis) $684,
Jefferson County Fair Association $14,851, Jersey
Mountain Ruritan Pioneer Days (Hampshire) $684, John
Henry Days Festival (Monroe) $4,698, Johnnie Johnson
Blues and Jazz Festival (Marion) $2,970, Johnstown
Community Fair (Harrison) $1,485, Junior Heifer Preview
Show (Lewis) $1,188, Kanawha Coal Riverfest-St. Albans
4th of July Festival (Kanawha) $2,970, Keeper of the
Mountains-Kayford (Kanawha) $1,485, Kenova Autumn
Festival (Wayne) $4,377, Kermit Fall Festival (Mingo)
$1,782, Keystone Reunion Gala (McDowell) $1,563, King
Coal Festival (Mingo) $2,970, Kingwood Downtown Street
Fair and Heritage Days (Preston) $1,188, L.Z. Rainelle
West Virginia Veterans Reunion (Greenbrier) $2,970, Lady
of Agriculture (Preston) $684, Larry Joe Harless Center
Octoberfest Hatfield McCoy Trail (Mingo) $5,940, Larry
Joe Harless Community Center Spring Middle School Event
(Mingo) $2,970, Last Blast of Summer (McDowell)
$2,970, Lewis County Fair Association $2,079, Lewisburg
Shanghai (Greenbrier) $1,188, Lincoln County Fall
Festival $4,752, Lincoln County Winterfest $2,970,
Lindside Veterans’ Day Parade (Monroe) $720, Little
Levels Heritage Festival (Pocahontas) $1,188, Lost Creek
Community Festival (Harrison) $4,158, Main Street Arts
Festival (Upshur) $3,127, Main Street Martinsburg
Chocolate Fest and Book Fair (Berkeley) $2,813,
Mannington District Fair (Marion) $3,564, Maple Syrup
Festival (Randolph) $684, Marion County FFA Farm Fest
$1,485, Marmet Labor Day Celebration (Kanawha) $3,078,
Marshall County Antique Power Show $1,485, Marshall
County Fair $4,456, Mason County Fair $2,970, Mason
Dixon Festival (Monongalia) $4,158, Matewan Massacre
Reenactment (Mingo) $5,004, Matewan-Magnolia Fair (Mingo) $15,932, McARTS-McDowell County $11,881, McDowell County Fair $1,485, McGrew House History Day (Preston) $1,188, McNeill’s Rangers ( Mineral) $4,752, Meadow Bridge Hometown Festival (Fayette) $743, Meadow River Days Festival (Greenbrier) $1,782, Mercer Bluestone Valley Fair (Mercer) $1,188, Mercer County Fair $1,188, Mercer County Heritage Festival $3,474, Mid Ohio Valley Antique Engine Festival (Wood) $1,782, Milton Christmas in the Park ( Cabell) $1,485, Milton 4th of July Celebration (Cabell) $1,485, Mineral County Fair $1,040, Mineral County Veterans Day Parade $891, Molasses Festival (Calhoun) $1,188, Monongahfest (Marion) $3,752, Moon Over Mountwood Fishing Festival (Wood) $1,782, Morgan County Fair-History Wagon $891, Moundsville Bass Festival (Marshall) $2,376, Moundsville July 4th Celebration (Marshall) $2,970, Mount Liberty Fall Festival (Barbour) $1,485, Mountain Fest (Monongalia) $11,881, Mountain Festival (Mercer) $2,747, Mountain Heritage Arts and Crafts Festival (Jefferson) $2,970, Mountain Music Festival (McDowell) $1,485, Mountain State Apple Harvest Festival (Berkeley) $4,456, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) $26,732, Mountaineer Hot Air Balloon Festival (Monongalia) $2,376, Mullens Dogwood Festival (Wyoming) $4,158, Multi-Cultural Festival of West Virginia (Kanawha) $11,881, Music and Barbecue - Banks District VFD (Upshur) $1,278, New Cumberland Christmas Parade (Hancock) $1,782, New Cumberland 4th of July (Hancock) $2,970, New River Bridge Day Festival (Fayette) $23,762, Newburg Volunteer Fireman’s Field Day (Preston) $684, Nicholas County Fair $2,970, Nicholas County Potato Festival $2,079, Oak Leaf Festival (Fayette) $6,253, Oceana Heritage Festival (Wyoming) $3,564, Oglebay City Park - Festival of Lights (Ohio) $47,524, Oglebay Festival (Ohio) $5,940, Ohio County Fair $5,346, Ohio River Fest (Jackson) $4,320, Ohio Valley Beef Association (Wood) $1,485, Ohio Valley Black Heritage Festival (Ohio) $3,267, Old Central City
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<td>Old Century City Fair (Barbour)</td>
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<td>Old Tyme Christmas (Jefferson)</td>
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<tr>
<td>Paden City Labor Day Festival (Wetzel)</td>
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<tr>
<td>Parkersburg</td>
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<tr>
<td>Homecoming (Wood)</td>
<td>$8,754</td>
</tr>
<tr>
<td>Patty Fest (Monongalia)</td>
<td></td>
</tr>
<tr>
<td>Paw Paw District Fair (Marion)</td>
<td>$2,079</td>
</tr>
<tr>
<td>Pax Reunion Committee (Fayette)</td>
<td>$2,970</td>
</tr>
<tr>
<td>Pendleton County 4-H Weekend</td>
<td>$1,188</td>
</tr>
<tr>
<td>Pendleton County Committee for Arts</td>
<td></td>
</tr>
<tr>
<td>Road Festival (Ritchie)</td>
<td>$1,188</td>
</tr>
<tr>
<td>Petersburg 4th of July Celebration (Grant)</td>
<td>$11,881</td>
</tr>
<tr>
<td>Petersburg HS Celebration (Grant)</td>
<td>$5,940</td>
</tr>
<tr>
<td>Piedmont-Annual Back Street Festival</td>
<td></td>
</tr>
<tr>
<td>(Mineral)</td>
<td>$2,376</td>
</tr>
<tr>
<td>Pine Bluff Fall Festival (Harrison)</td>
<td>$2,376</td>
</tr>
<tr>
<td>Pine Grove 4th of July Festival (Wetzel)</td>
<td>$4,158</td>
</tr>
<tr>
<td>Pineville Festival</td>
<td></td>
</tr>
<tr>
<td>(Wyoming)</td>
<td>$3,564</td>
</tr>
<tr>
<td>Pleasants County Agriculture Youth Fair</td>
<td>$2,970</td>
</tr>
<tr>
<td>Poca Heritage Days (Putnam)</td>
<td>$1,782</td>
</tr>
<tr>
<td>Point Pleasant Stern Wheel Regatta (Mason)</td>
<td>$2,970</td>
</tr>
<tr>
<td>Pratt Fall Festival (Kanawha)</td>
<td>$1,485</td>
</tr>
<tr>
<td>Princeton Autumnfest (Mercer)</td>
<td>$1,563</td>
</tr>
<tr>
<td>Princeton Street Fair (Mercer)</td>
<td>$2,970</td>
</tr>
<tr>
<td>Putnam County Fair</td>
<td>$2,970</td>
</tr>
<tr>
<td>Quartets on Parade (Hardy)</td>
<td>$2,376</td>
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<tr>
<td>Rainelle Fall Festival (Greenbrier)</td>
<td>$3,127</td>
</tr>
<tr>
<td>Rand County Community Arts Council</td>
<td>$1,782</td>
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<tr>
<td>Randolph County Fair</td>
<td>$2,970</td>
</tr>
<tr>
<td>Rainville 4th of July Festival (Jackson)</td>
<td>$8,910</td>
</tr>
<tr>
<td>Ripley 4th of July Festival (Jackson)</td>
<td></td>
</tr>
<tr>
<td>Ritchie County Fair and Exposition</td>
<td>$2,970</td>
</tr>
<tr>
<td>Ritchie County Fair</td>
<td></td>
</tr>
<tr>
<td>Pioneer Days</td>
<td>$684</td>
</tr>
<tr>
<td>River City Festival (Preston)</td>
<td></td>
</tr>
<tr>
<td>Roane County Agriculture Field Day</td>
<td>$1,782</td>
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<tr>
<td>Rock the Park</td>
<td></td>
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<tr>
<td>Romney Heritage Days (Hampshire)</td>
<td>$1,876</td>
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<tr>
<td>Ronceverte River Festival (Greenbrier)</td>
<td>$2,970</td>
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<tr>
<td>Rowlesburg Labor Day Festival (Preston)</td>
<td>$684</td>
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<tr>
<td>Rupert Country Fling (Greenbrier)</td>
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<tr>
<td>Saint Spyridon Greek Festival (Harrison)</td>
<td>$1,485</td>
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<tr>
<td>Salem Apple Butter Festival (Harrison)</td>
<td>$2,376</td>
</tr>
<tr>
<td>Sistersville 4th of July (Tyler)</td>
<td>$3,267</td>
</tr>
<tr>
<td>Skirmish on the River (Mingo)</td>
<td></td>
</tr>
<tr>
<td>Smoke on the Water (Wetzel)</td>
<td>$1,782</td>
</tr>
<tr>
<td>South</td>
<td></td>
</tr>
</tbody>
</table>
Charleston Summerfest (Kanawha) $5,940, Southern Wayne County Fall Festival $684, Spirit of Grafton Celebration (Taylor) $5,940, Springfield Peach Festival (Hampshire) $738, St. Albans City of Lights - December (Kanawha) $2,970, Sternwheel Festival (Wood) $1,782, Stoco Reunion (Raleigh) $1,485, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) $6,534, Stonewall Jackson’s Roundhouse Raid (Berkeley) $7,200, Storytelling Festival (Lewis) $400, Strawberry Festival (Upshur) $17,821, Sylvester Big Coal River Festival (Boone) $1,944, Tacy Fair (Barbour) $684, Taste of Parkersburg (Wood) $2,970, Taylor County Fair $3,267, Terra Alta VFD 4th of July Celebration (Preston) $684, The Gathering at Sweet Creek (Wood) $1,782, Three Rivers Coal Festival (Marion) $4,604, Thunder on the Tygart - Mothers’ Day Celebration (Taylor) $7,000, Town of Delbarton 4th of July Celebration (Mingo) $1,782, Town of Fayetteville Heritage Festival (Fayette) $4,456, Town of Matoaka Hog Roast (Mercer) $684, Town of Rivesville 4th of July Festival (Marion) $3,127, Town of Winfield - Putnam County Homecoming $3,240, St. Albans Train Fest (Kanawha) $6,120, Treasure Mountain Festival (Pendleton) $14,851, Tri-County Fair (Grant) $22,548, Tucker County Arts Festival and Celebration $10,692, Tucker County Fair $2,821, Tucker County Health Fair $1,188, Tunnelton Depot Days (Preston) $684, Tunnelton Volunteer Fire Department Festival (Preston) $684, Turkey Festival (Hardy) $1,782, Tyler County Fair $3,088, Tyler County 4th of July $400, Tyler County OctoberFest $720, Union Community Irish Festival (Barbour) $648, Uniquely West Virginia Festival (Morgan) $1,188, Upper Kanawha Valley Oktoberfest (Kanawha) $1,485, Upper Ohio Valley Italian Festival (Ohio) $7,128, Upshur County Youth Livestock Show $1,440, Valley District Fair (Preston) $2,079, Veterans Welcome Home Celebration (Cabell) $938, Vietnam Veterans of America # 949 Christmas Party (Cabell) $684, Volcano Days at Mountwood Park (Wood) $2,970, War Homecoming Fall Festival (McDowell) $891, Wardensville Fall Festival (Hardy) $2,970, Wayne County
<table>
<thead>
<tr>
<th>Event</th>
<th>Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair, Wayne County Fall Festival</td>
<td>$2,970</td>
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<tr>
<td>County Fair, Webster</td>
<td>$3,600</td>
</tr>
<tr>
<td>Webster Wild Water Weekend (Webster)</td>
<td>$8,910</td>
</tr>
<tr>
<td>Welcome Home Family Day (Wayne)</td>
<td>$1,900</td>
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<tr>
<td>4th of July Celebration (Brooke)</td>
<td>$4,456</td>
</tr>
<tr>
<td>Festival of Brooke County</td>
<td>$2,970</td>
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<tr>
<td>Blackberry Festival (Harrison)</td>
<td>$2,970</td>
</tr>
<tr>
<td>Chestnut Festival (Preston)</td>
<td>$684</td>
</tr>
<tr>
<td>Festival (Boone)</td>
<td>$5,940</td>
</tr>
<tr>
<td>West Virginia Dandelion Festival (Greenbrier)</td>
<td>$4,812</td>
</tr>
<tr>
<td>West Virginia Day at the Railroad Museum</td>
<td>$2,970</td>
</tr>
<tr>
<td>West Virginia Fair and Exposition (Wood)</td>
<td>$5,940</td>
</tr>
<tr>
<td>West Virginia Fireman’s Rodeo (Fayette)</td>
<td>$1,485</td>
</tr>
<tr>
<td>West Virginia Oil and Gas Festival (Tyler)</td>
<td>$6,534</td>
</tr>
<tr>
<td>West Virginia Peach Festival (Hampshire)</td>
<td>$3,240</td>
</tr>
<tr>
<td>Polled Hereford Association (Braxton)</td>
<td>$891</td>
</tr>
<tr>
<td>West Virginia Pumpkin Festival (Cabell)</td>
<td>$5,940</td>
</tr>
<tr>
<td>West Virginia State Folk Festival (Gilmer)</td>
<td>$2,970</td>
</tr>
<tr>
<td>West Virginia Water Festival - City of Hinton (Summers)</td>
<td>$9,144</td>
</tr>
<tr>
<td>Weston VFD 4th of July Firemen Festival (Lewis)</td>
<td>$1,188</td>
</tr>
<tr>
<td>Autumnfest, Wetzel County Town and Country</td>
<td>$3,267</td>
</tr>
<tr>
<td>Days, Wheeling Celtic Festival (Ohio)</td>
<td>$1,166</td>
</tr>
<tr>
<td>Wheeling City of Lights (Ohio)</td>
<td>$4,752</td>
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<tr>
<td>Sternwheel Regatta (Ohio)</td>
<td>$5,940</td>
</tr>
<tr>
<td>Wheeling Vintage Raceboat Regatta (Ohio)</td>
<td>$11,881</td>
</tr>
<tr>
<td>Whipple Community Action (Fayette)</td>
<td>$1,485</td>
</tr>
<tr>
<td>Wine Festival and Mountain Music Event (Harrison)</td>
<td>$2,970</td>
</tr>
<tr>
<td>Winter Festival of the Waters (Berkeley)</td>
<td>$2,970</td>
</tr>
<tr>
<td>Wirt County Fair, Wirt County Pioneer Days</td>
<td>$1,188</td>
</tr>
<tr>
<td>Wyoming County Civil War Days</td>
<td>$1,296</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Preservation West Virginia (fund 3534, appropriation 09200), Fairs and Festivals (fund 3534, appropriation 12200), Archeological Curation/Capital
Improvements (fund 3534, appropriation 24600), Historic Preservation Grants (fund 3534, appropriation 31100), Grants for Competitive Arts Program (fund 3534, appropriation 62400), and Project ACCESS (fund 3534, appropriation 86500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Any Fairs & Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and the Cultural Grant Program allocations.

295-Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2020 Org 0433

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Books and Films</td>
<td>17900</td>
<td>$ 360,784</td>
</tr>
<tr>
<td>2 Services to Libraries</td>
<td>18000</td>
<td>550,000</td>
</tr>
<tr>
<td>3 Grants to Public Libraries</td>
<td>18200</td>
<td>9,439,571</td>
</tr>
<tr>
<td>4 Digital Resources</td>
<td>30900</td>
<td>219,992</td>
</tr>
<tr>
<td>5 Infomine Network</td>
<td>88400</td>
<td>943,353</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$11,513,700</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Libraries – Special Projects (fund 3559, appropriation 62500) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

296-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508
Ch. 31] APPROPRIATIONS 369

1 Personal Services and  
2 Employee Benefits...............  00100 $ 209,640  
3 Current Expenses ......................  13000 332,284  
4 Repairs and Alterations.............  06400 1,000  
5 Local Programs Service  
6 Delivery Costs ......................  20000 2,435,250  
7 Silver Haired Legislature ...........  20200 18,500  
8 Transfer to Division of Human Services  
9 for Health Care and Title XIX  
10 Waiver for Senior Citizens ......  53900 4,615,503  
11 Roger Tompkins  
12 Alzheimer’s Respite Care.......  64300 2,302,016  
13 WV Alzheimer’s Hotline...........  72400 45,000  
14 Regional Aged and Disabled  
15 Resource Center....................  76700 425,000  
16 Senior Services Medicaid Transfer 87100 16,400,070  
17 Legislative Initiatives  
18 for the Elderly.....................  90400 9,671,239  
19 Long Term Care Ombudsman ......  90500 297,226  
20 BRIM Premium.......................  91300 7,718  
21 In-Home Services and  
22 Nutrition for Senior Citizens ...  91700 6,095,941  
23 Total.................................... $42,856,387  

24 Any unexpended balance remaining in the  
25 appropriation for Senior Citizen Centers and Programs  
26 (fund 5405, appropriation 46200) at the close of the fiscal  
27 year 2019 is hereby reappropriated for expenditure during  
28 the fiscal year 2020.  

29 Included in the above appropriation for Current  
30 Expenses (fund 5405, appropriation 13000), is funding to  
31 support an in-home direct care workforce registry.  

32 The above appropriation for Transfer to Division of  
33 Human Services for Health Care and Title XIX Waiver for  
34 Senior Citizens (appropriation 53900) along with the  
35 federal moneys generated thereby shall be used for  
36 reimbursement for services provided under the program.
**297-Higher Education Policy Commission –**

**Lottery Education –**

**Higher Education Policy Commission –**

**Control Account**

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2020 Org 0441

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>RHI Program and Site Support (R)</td>
<td>03600</td>
<td>$1,912,491</td>
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<tr>
<td>RHI Program and Site Support –</td>
<td></td>
<td></td>
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<tr>
<td>RHEP Program Administration</td>
<td>03700</td>
<td>146,653</td>
</tr>
<tr>
<td>RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (R)</td>
<td>03800</td>
<td>88,913</td>
</tr>
<tr>
<td>Minority Doctoral Fellowship (R)</td>
<td>16600</td>
<td>129,604</td>
</tr>
<tr>
<td>Health Sciences Scholarship (R)</td>
<td>17600</td>
<td>225,527</td>
</tr>
<tr>
<td>Vice Chancellor for Health Sciences – Rural Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residency Program (R)</td>
<td>60100</td>
<td>62,725</td>
</tr>
<tr>
<td>WV Engineering, Science, and Technology Scholarship Program.</td>
<td>86800</td>
<td>452,831</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$3,018,744</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for RHI Program and Site Support (fund 4925, appropriation 03600), RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (fund 4925, appropriation 03800), Minority Doctoral Fellowship (fund 4925, appropriation 16600), Health Sciences Scholarship (fund 4925, appropriation 17600), and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4925, appropriation 60100) at the close of fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.
The above appropriation for WV Engineering, Science, and Technology Scholarship Program (appropriation 86800) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

298-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2020 Org 0442

1 Debt Service – Total ....................... 31000 $ 5,000,000

2 Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

299-Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2020 Org 0463

1 WVU Health Sciences –
2 RHI Program and Site Support (R) ...................... 03500 $ 1,181,728
3 MA Public Health Program And Health
4 Science Technology (R) ............ 62300 52,445
5 Health Sciences Career
6 Opportunities Program (R) ...... 86900 336,987
Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185, appropriation 96700) at the close of fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

300-Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(WV Code Chapter 18B)

Fund 4896 FY 2020 Org 0471

Marshall Medical School –
RHI Program and
Site Support (R)............... 03300 $ 427,075
Vice Chancellor for
Health Sciences – Rural Health
Residency Program (R) ......... 60100 171,361
Total............................... $ 598,436

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of
fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Total TITLE II, Section 4 –
Lottery Revenue ......................  $ 127,808,000

Sec. 5. Appropriations from state excess lottery revenue fund. — In accordance with W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.

301-Lottery Commission –

Refundable Credit

Fund 7207 FY 2020 Org 0705

<table>
<thead>
<tr>
<th>Excess Lottery Funds</th>
<th>Excess Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>70000 $ 10,000,000</td>
<td>70000</td>
</tr>
</tbody>
</table>

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be
completed by the Director of the Lottery upon the commissioner’s request.

302-Lottery Commission –

*General Purpose Account*

Fund 7206 FY 2020 Org 0705

1. General Revenue Fund –
   2. Transfer ........................................ 70011 $ 65,000,000

The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.Va. Code §29-22-18a.

303-Higher Education Policy Commission –

*Education Improvement Fund*

Fund 4295 FY 2020 Org 0441

1. PROMISE Scholarship –
   2. Transfer ........................................ 80000 $ 29,000,000

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

304-Economic Development Authority –

*Economic Development Project Fund*

Fund 9065 FY 2020 Org 0944

1. Debt Service – Total......................... 31000 $ 19,000,000
Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

305-Department of Education –

School Building Authority

Fund 3514 FY 2020 Org 0402

1 Debt Service – Total ...................... 31000 $19,000,000

306-West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2020 Org 0316

1 Directed Transfer ....................... 70000 $46,000,000


307-Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2020 Org 0441

1 Directed Transfer ....................... 70000 $15,000,000

The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

308-Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2020 Org 0310
<table>
<thead>
<tr>
<th></th>
<th>Appropriation Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses (R)</td>
<td>13000 $ 23,300</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations (R)</td>
<td>06400 161,200</td>
</tr>
<tr>
<td>3</td>
<td>Equipment (R)</td>
<td>07000 200,000</td>
</tr>
<tr>
<td>4</td>
<td>Buildings (R)</td>
<td>25800 100,000</td>
</tr>
<tr>
<td>5</td>
<td>Other Assets (R)</td>
<td>69000 1,020,500</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$ 1,505,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the above appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Unclassified (fund 3277, appropriation 09900), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

309-Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2020 Org 0944

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>04000 $ 2,032,000</td>
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</tbody>
</table>

310-Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2020 Org 0944

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>04000 $ 4,395,000</td>
</tr>
</tbody>
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311-Racing Commission –

Fund 7308 FY 2020 Org 0707

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Breeders Compensation</td>
<td>21800 $ 2,000,000</td>
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</table>
### 312-Lottery Commission –

**Distributions to Statutory Funds and Purposes**

**Fund 7213 FY 2020 Org 0705**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Transfer to Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Parking Garage Fund – Transfer</td>
<td>70001</td>
<td>$</td>
<td>500,000</td>
</tr>
<tr>
<td>2</td>
<td>2004 Capitol Complex Parking</td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>Garage Fund – Transfer</td>
<td>70002</td>
<td>$</td>
<td>216,478</td>
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<tr>
<td>4</td>
<td>Capitol Dome and Improvements Fund – Transfer</td>
<td>70003</td>
<td>$</td>
<td>1,796,256</td>
</tr>
<tr>
<td>5</td>
<td>Transfer</td>
<td></td>
<td></td>
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<tr>
<td>6</td>
<td>Capitol Renovation and Improvement Fund – Transfer</td>
<td>70004</td>
<td>$</td>
<td>2,381,252</td>
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<td>8</td>
<td>Development Office Promotion Fund – Transfer</td>
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<td>$</td>
<td>1,298,864</td>
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<td>10</td>
<td>Research Challenge Fund – Transfer</td>
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<td>$</td>
<td>1,731,820</td>
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<td>11</td>
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<td>$</td>
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<td>14</td>
<td>Cultural Facilities and Capitol Resources Matching Grant</td>
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<td>$</td>
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<td>15</td>
<td>Transfer</td>
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<tr>
<td>16</td>
<td>State Debt Reduction Fund – Transfer</td>
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<td>$</td>
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<td>17</td>
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<td>General Revenue Fund – Transfer</td>
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<td>20</td>
<td>West Virginia Racing Commission Racetrack Video Lottery Account</td>
<td>70012</td>
<td>$</td>
<td>3,463,637</td>
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<td>21</td>
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<td>22</td>
<td>Historic Resort Hotel Fund – Transfer</td>
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<td>$</td>
<td>24,010</td>
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<td>23</td>
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<td>24</td>
<td>Licensed Racetrack Regular Purse Fund – Transfer</td>
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<td>25</td>
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### 313-Governor’s Office

(WV Code Chapter 5)

**Fund 1046 FY 2020 Org 0100**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Transfer to Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Any unexpended balance remaining in the appropriation for Publication of Papers and Transition</td>
<td></td>
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</table>
Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

314-West Virginia Development Office
(WV Code Chapter 5B)

Fund 3170 FY 2020 Org 0307

Any unexpended balances remaining in the appropriations for Unclassified – Total (fund 3170, appropriation 09600), Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300), and Connectivity Research and Development – Lottery Surplus (fund 3170, appropriation 92300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

315-Higher Education Policy Commission – Administration –

Control Account
(WV Code Chapter 18B)

Fund 4932 FY 2020 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

316-Division of Human Services
(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2020 Org 0511

Medical Services................................. 18900 $16,302,960
317-Division of Corrections and Rehabilitation –
Correctional Units
(WV Code Chapter 15A)
Fund 6283 FY 2020 Org 0608

1 Any unexpended balance remaining in the
2 appropriation for Capital Outlay and Maintenance (fund
3 6283, appropriation 75500) at the close of the fiscal year
4 2019 is hereby reappropriated for expenditure during the
5 fiscal year 2020.

6 Total TITLE II, Section 5 –
7 Excess Lottery Funds .............. $ 290,257,000

1 Sec. 6. Appropriations of federal funds. — In
2 accordance with Article 11, Chapter 4 of the Code from
3 federal funds there are hereby appropriated conditionally
4 upon the fulfillment of the provisions set forth in Article 2,
5 Chapter 11B of the Code the following amounts, as
6 itemized, for expenditure during the fiscal year 2020.

LEGISLATIVE
318-Crime Victims Compensation Fund
(WV Code Chapter 14)
Fund 8738 FY 2020 Org 2300

<table>
<thead>
<tr>
<th>Appropriation Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic Loss Claim</td>
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JUDICIAL
319-Supreme Court
Fund 8867 FY 2020 Org 2400
<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$1,813,000</td>
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<td>3</td>
<td>Current Expenses</td>
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<td>$2,057,000</td>
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<td>4</td>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$100,000</td>
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<tr>
<td>5</td>
<td>Equipment</td>
<td>07000</td>
<td>$250,000</td>
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<tr>
<td>6</td>
<td>Other Assets</td>
<td>69000</td>
<td>$280,000</td>
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<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$4,500,000</td>
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</table>

**EXECUTIVE**

320-Department of Agriculture  
(WV Code Chapter 19)  
Fund 8736 FY 2020 Org 1400

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<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
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<td>2</td>
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<td>Equipment</td>
<td>07000</td>
<td>$910,500</td>
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321-Department of Agriculture –  
Meat Inspection Fund  
(WV Code Chapter 19)  
Fund 8737 FY 2020 Org 1400

<table>
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<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
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### 322-Department of Agriculture –
#### State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2020 Org 1400

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<th>Description</th>
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### 323-Department of Agriculture –
#### Land Protection Authority

Fund 8896 FY 2020 Org 1400

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<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<td>$210,240</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$210,240</td>
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<td>3</td>
<td>Unclassified</td>
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<td>7,484</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
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<td>Total</td>
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### 324-Secretary of State –
#### State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2020 Org 1600

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<th>Description</th>
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<tr>
<td>1</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$210,240</td>
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<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>7,484</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>415,727</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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DEPARTMENT OF COMMERCE
### 325-Division of Forestry
(WV Code Chapter 19)

Fund 8703 FY 2020 Org 0305

<table>
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<td><strong>$8,987,765</strong></td>
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### 326-Geological and Economic Survey
(WV Code Chapter 29)

Fund 8704 FY 2020 Org 0306

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<td>6</td>
<td>Other Assets</td>
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### 327-West Virginia Development Office
(WV Code Chapter 5B)

Fund 8705 FY 2020 Org 0307

<table>
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<td><strong>Total</strong></td>
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<td><strong>$5,343,940</strong></td>
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</table>
## 328-West Virginia Development Office – Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8901 FY 2020 Org 0307

<table>
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<th>Category</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<td>Repairs and Alterations</td>
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<td>Unclassified</td>
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## 329-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2020 Org 0308

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</thead>
<tbody>
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<td>Personal Services and Employee Benefits</td>
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<td>Repairs and Alterations</td>
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## 330-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2020 Org 0310

<table>
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<th>Category</th>
<th>Code</th>
<th>Amount</th>
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<tr>
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<td>951,000</td>
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</table>
### 331-Division of Miners’ Health,

**Safety and Training**

(WV Code Chapter 22)

**Fund 8709 FY 2020 Org 0314**

<table>
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<tbody>
<tr>
<td>2</td>
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<tr>
<td>3</td>
<td>Current Expenses .............. 13000</td>
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<td>Total................................</td>
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</table>

### 332-WorkForce West Virginia

(WV Code Chapter 23)

**Fund 8835 FY 2020 Org 0323**

| 1 | Unclassified .................. 09900 | $ 5,127 |
| 2 | Current Expenses .............. 13000 | $ 507,530 |
| 3 | Reed Act 2002 – Unemployment |
| 4 | Compensation .................. 62200 | $ 2,850,000 |
| 5 | Reed Act 2002 – |
| 6 | Employment Services .......... 63000 | $ 1,650,000 |
| 7 | Total................................ | $ 5,012,657 |

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by WorkForce West Virginia for the specific purpose of administration of the state’s unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.
333-Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2020 Org 0328

<table>
<thead>
<tr>
<th>Item</th>
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334-State Board of Rehabilitation – Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2020 Org 0932

<table>
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<th>Item</th>
<th>Code</th>
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<td>Repairs and Alterations</td>
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335-State Board of Rehabilitation – Division of Rehabilitation Services – Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2020 Org 0932

<table>
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<th>Item</th>
<th>Code</th>
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<td>Repairs and Alterations</td>
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</table>
## DEPARTMENT OF EDUCATION

### 336-State Board of Education –

**State Department of Education**

(WV Code Chapters 18 and 18A)

**Fund 8712 FY 2020 Org 0402**

<table>
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<tr>
<th>Item</th>
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<td>Personal Services and</td>
<td>5,785,359</td>
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<td>07000</td>
<td>Repairs and Alterations</td>
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### 337-State Board of Education –

**School Lunch Program**

(WV Code Chapters 18 and 18A)

**Fund 8713 FY 2020 Org 0402**

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### 338-State Board of Education –

**Vocational Division**

(WV Code Chapters 18 and 18A)
**Fund 8714 FY 2020 Org 0402**

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**339-State Board of Education – Aid for Exceptional Children**

(WV Code Chapters 18 and 18A)

**Fund 8715 FY 2020 Org 0402**

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**DEPARTMENT OF ARTS, CULTURE, AND HISTORY**

**340-Commission for National and Community Service**

(WV Code Chapter 5F)

**Fund 8841 FY 2020 Org 0432**

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341-Division of Culture and History
(WV Code Chapter 29)

Fund 8718 FY 2020 Org 0432

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342-Library Commission
(WV Code Chapter 10)

Fund 8720 FY 2020 Org 0433

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343-Educational Broadcasting Authority
(WV Code Chapter 10)

Fund 8721 FY 2020 Org 0439

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

344-Division of Environmental Protection
(WV Code Chapter 22)

Fund 8708 FY 2020 Org 0313
### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

**345-Consolidated Medical Service Fund**

(WV Code Chapter 16)

Fund 8723 FY 2020 Org 0506

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**346-Division of Health –**

*Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2020 Org 0506

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<thead>
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347-Division of Health –  
*West Virginia Safe Drinking Water Treatment*  
(WV Code Chapter 16)  

Fund 8824 FY 2020 Org 0506  

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348-Human Rights Commission  
(WV Code Chapter 5)  

Fund 8725 FY 2020 Org 0510  

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349-Division of Human Services  
(WV Code Chapters 9, 48, and 49)  

Fund 8722 FY 2020 Org 0511  

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### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

**350-Office of the Secretary**

(WV Code Chapter 5F)

Fund 8876 FY 2020 Org 0601

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**351-Adjutant General – State Militia**

(WV Code Chapter 15)

Fund 8726 FY 2020 Org 0603

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<td>Martinsburg Starbase</td>
<td>74200</td>
<td>439,622</td>
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<td>Charleston Starbase</td>
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</table>

The Adjutant General shall have the authority to transfer between appropriations.

**352-Adjutant General – West Virginia National Guard Counterdrug Forfeiture Fund**

(WV Code Chapter 15)

Fund 8785 FY 2020 Org 0603

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### 353-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2020 Org 0606

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<tr>
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### 354-Division of Corrections and Rehabilitation

(WV Code Chapters 15A)

Fund 8836 FY 2020 Org 0608

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### 355-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2020 Org 0612

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<td>Land</td>
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<td>500</td>
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356-Fire Commission
(WV Code Chapter 29)
Fund 8819 FY 2020 Org 0619

1 Current Expenses ...................... 13000 $ 80,000

357-Division of Justice and Community Services
(WV Code Chapter 15)
Fund 8803 FY 2020 Org 0620

1 Personal Services and Employee Benefits .......... 00100 $ 1,222,258
2 Unclassified .................................. 09900 25,185
3 Current Expenses ......................... 13000 25,381,973
4 Repairs and Alterations ..................... 06400 1,750
5 Total ........................................ $ 26,631,166

DEPARTMENT OF REVENUE

358-Insurance Commissioner
(WV Code Chapter 33)
Fund 8883 FY 2020 Org 0704

1 Current Expenses ......................... 13000 $ 3,000,000

DEPARTMENT OF TRANSPORTATION

359-Division of Motor Vehicles
(WV Code Chapter 17B)
Fund 8787 FY 2020 Org 0802

1 Personal Services and Employee Benefits .......... 00100 $ 501,394
2 Current Expenses .......................... 13000 6,498,106
3 Repairs and Alterations ..................... 06400 500
4 Total ........................................ $ 7,000,000
360-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2020 Org 0805

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<td>1</td>
<td>Personal Services and Employee Benefits</td>
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DEPARTMENT OF VETERANS’ ASSISTANCE

361-Department of Veterans’ Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2020 Org 0613

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<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
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<td>Equipment</td>
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<td>$6,857,248</td>
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</table>

362-Department of Veterans’ Assistance – Veterans’ Home

(WV Code Chapter 9A)

Fund 8728 FY 2020 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$955,426</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>13000</td>
<td>844,092</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>220,000</td>
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</table>
### Ch. 31] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>198,000</td>
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<tr>
<td>Buildings</td>
<td>25800</td>
<td>296,000</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>20,000</td>
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<tr>
<td>Land</td>
<td>73000</td>
<td>10,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 2,543,518</strong></td>
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</table>

**BUREAU OF SENIOR SERVICES**

363-Bureau of Senior Services

(WV Code Chapter 29)

**Fund 8724 FY 2020 Org 0508**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$ 767,364</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>13,811,853</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>3,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
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</table>

**MISCELLANEOUS BOARDS AND COMMISSIONS**

364-Public Service Commission – Motor Carrier Division

(WV Code Chapter 24A)

**Fund 8743 FY 2020 Org 0926**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$ 1,352,576</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>368,953</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 1,761,529</strong></td>
</tr>
</tbody>
</table>

365-Public Service Commission – Gas Pipeline Division

(WV Code Chapter 24B)
Fund 8744 FY 2020 Org 0926

1. Personal Services and Employee Benefits ............... 00100 $ 621,039
2. Current Expenses .................................. 13000 $ 124,628
3. Equipment ........................................ 07000 $ 3,000
4. Unclassified ....................................... 09900 $ 4,072
5. Total .................................................. $ 752,739

366-National Coal Heritage Area Authority
(WV Code Chapter 29)

Fund 8869 FY 2020 Org 0941

1. Personal Services and Employee Benefits ............... 00100 $ 163,315
2. Current Expenses .................................. 13000 $ 633,597
3. Repairs and Alterations ............................... 06400 $ 5,000
4. Equipment ........................................ 07000 $ 3,000
5. Other Assets ........................................ 69000 $ 2,000
6. Total .................................................. $ 806,912

7. Total TITLE II, Section 6 – Federal Funds ............... $ 5,189,543,394

Sec. 7. Appropriations from federal block grants. —
The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2020.

367-West Virginia Development Office – Community Development

Fund 8746 FY 2020 Org 0307

1. Personal Services and Employee Benefits ............... 00100 $ 10,658,978
2. Unclassified ........................................ 09900 $ 2,375,000
3. Current Expenses .................................. 13000 $ 224,476,883
4. Total .................................................. $ 237,510,861
### 368-Department of Commerce

**West Virginia Development Office –**

**Office of Economic Opportunity –**

**Community Services**

*Fund 8902 FY 2020 Org 0307*

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$362,389</td>
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<tr>
<td>Unclassified</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>12,002,111</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>1,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>9,000</td>
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<tr>
<td><strong>Total</strong></td>
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<td>$12,500,000</td>
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</table>

### 369-WorkForce West Virginia –

**Workforce Investment Act**

*Fund 8749 FY 2020 Org 0323*

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<tr>
<td>Unclassified</td>
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<td>39,263,511</td>
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<td>Equipment</td>
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<tr>
<td>Buildings</td>
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<td><strong>Total</strong></td>
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</table>

### 370-Division of Health –

**Maternal and Child Health**

*Fund 8750 FY 2020 Org 0506*

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>81,439</td>
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<td>Current Expenses</td>
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<td>5,794,267</td>
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<td><strong>Total</strong></td>
<td></td>
<td>$8,143,915</td>
</tr>
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</table>
### 371-Division of Health – Preventive Health

**Fund 8753 FY 2020 Org 0506**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tr>
<td>Employee Benefits</td>
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<td></td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>22,457</td>
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<td>Current Expenses</td>
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<tr>
<td>Equipment</td>
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<td>Total</td>
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<td>$2,351,802</td>
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</table>

### 372-Division of Health – Substance Abuse Prevention and Treatment

**Fund 8793 FY 2020 Org 0506**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services and</td>
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<tr>
<td>Employee Benefits</td>
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<td>Unclassified</td>
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</table>

### 373-Division of Health – Community Mental Health Services

**Fund 8794 FY 2020 Org 0506**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$551,368</td>
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<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>33,533</td>
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<td>4,883,307</td>
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<tr>
<td>Total</td>
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<td>$5,468,208</td>
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</table>

### 374-Division of Human Services – Energy Assistance

**Fund 8755 FY 2020 Org 0511**
| 1 | Personal Services and Employee Benefits ................... | 00100 | $ 1,856,844 |
| 2 | Unclassified ................................... | 09900 | 350,000 |
| 3 | Current Expenses .................................. | 13000 | 33,181,300 |
| 4 | Total............................................... |       | $ 35,388,144 |

**375-Division of Human Services – Social Services**

Fund 8757 FY 2020 Org 0511

| 1 | Personal Services and Employee Benefits ................... | 00100 | $ 8,806,005 |
| 2 | Unclassified ................................... | 09900 | 171,982 |
| 3 | Current Expenses .................................. | 13000 | 8,870,508 |
| 4 | Total............................................... |       | $ 17,848,495 |

**376-Division of Human Services – Temporary Assistance for Needy Families**

Fund 8816 FY 2020 Org 0511

| 1 | Personal Services and Employee Benefits ................... | 00100 | $ 19,913,598 |
| 2 | Unclassified ................................... | 09900 | 1,250,000 |
| 3 | Current Expenses .................................. | 13000 | 105,847,136 |
| 4 | Total............................................... |       | $127,010,734 |

**377-Division of Human Services – Child Care and Development**

Fund 8817 FY 2020 Org 0511

| 1 | Personal Services and Employee Benefits ................... | 00100 | $ 2,793,496 |
| 2 | Unclassified ................................... | 09900 | 350,000 |
| 3 | Current Expenses .................................. | 13000 | 46,999,456 |
| 4 | Total............................................... |       | $ 50,142,952 |
| 5 | Total TITLE II, Section 7 – Federal Block Grants............ |   | $ 550,281,331 |
Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2020, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $642,817 special revenue funds in the amount of $212,743 and state road funds in the amount of $1,703,146 for payment of claims against the state.

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following item is hereby appropriated from the state fund, general revenue, and is to be available for expenditure during the fiscal year 2020 out of surplus funds only, accrued from the fiscal year ending June 30, 2019, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus as of July 31, 2019 from the fiscal year ending June 30, 2019, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2019, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

378-Department of Agriculture
(WV Code Chapter 19)
Fund 0131 FY 2020 Org 1400

WV Food Banks – Surplus ............ $300,000

379-State Board of Education
State Department of Education
Directed Transfer – Surplus........... $3,500,000

The above appropriation for Directed Transfer - Surplus (fund 0313, appropriation #) shall be transferred to the Safe Schools Fund (fund XXXX, org 0402) established by W.Va. Code §18-5-48.

380-Shepherd University

(Shepherd University – Surplus $500,000)

381-Blue Ridge Community and Technical College

(Blue Ridge Community and Technical College – Surplus $500,000)

382-Eastern West Virginia Community and Technical College

(Eastern West Virginia Community and Technical College – Surplus $500,000)

383-West Virginia University at Parkersburg

(West Virginia University at Parkersburg – Surplus $500,000)
<table>
<thead>
<tr>
<th>Fund</th>
<th>Org</th>
<th>Org</th>
<th>Description</th>
<th>Surplus</th>
<th>Amount</th>
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<tr>
<td>0131</td>
<td>FY 2020</td>
<td>Org 0464</td>
<td>West Virginia University at Parkersburg – Surplus</td>
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<td>$500,000</td>
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<td>0363</td>
<td>FY 2020</td>
<td>Org 0485</td>
<td>Glenville State College – Surplus</td>
<td></td>
<td>$500,000</td>
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<tr>
<td>0407</td>
<td>FY 2020</td>
<td>Org 0506</td>
<td>New Born Screening Testing – Surplus</td>
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<td>$200,000</td>
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<tr>
<td>0407</td>
<td>FY 2020</td>
<td>Org 0506</td>
<td>Sexual Assault Intervention – Surplus</td>
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<td>$125,000</td>
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<tr>
<td>0246</td>
<td>FY 2020</td>
<td>Org 0304</td>
<td>Tourism – Brand Promotion – Surplus</td>
<td></td>
<td>$5,000,000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Tourism – Public Relations – Surplus</td>
<td></td>
<td>750,000</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------</td>
<td>---</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Tourism – Events and Sponsorships –</td>
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<td></td>
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</tr>
<tr>
<td>6</td>
<td>Surplus ..........................................................</td>
<td>250,000</td>
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<td></td>
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</tr>
<tr>
<td>7</td>
<td>Tourism – Industry Development –</td>
<td></td>
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<td></td>
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<tr>
<td>8</td>
<td>Surplus ..........................................................</td>
<td>250,000</td>
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<tr>
<td>9</td>
<td>State Parks and Recreation Advertising –</td>
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<td></td>
<td></td>
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<tr>
<td>10</td>
<td>Surplus ..........................................................</td>
<td>750,000</td>
<td></td>
<td></td>
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<tr>
<td>11</td>
<td>Total .....................................................................</td>
<td>$ 7,000,000</td>
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</tbody>
</table>

**388-State Board of Education**

*Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2020 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Jim’s Dream – Surplus ..........................................</td>
<td>$ 4,000,000</td>
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</table>

**389-Consolidated Medical Service Fund**

(WV Code Chapter 16)

Fund 0525 FY 2020 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Jim’s Dream – Surplus ..........................................</td>
<td>$ 1,000,000</td>
</tr>
</tbody>
</table>

**390-Division of Human Services**

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2020 Org 0511

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Medical Services – Surplus ....................................</td>
<td>$ 53,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Total TITLE II, Section 9 –</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Surplus Accrued ..................................................</td>
<td>$ 71,625,000</td>
</tr>
</tbody>
</table>

**Sec. 10. Appropriations from lottery net profits**

*surplus accrued.* — The following item is hereby appropriated from the lottery net profits, and is to be available for expenditure during the fiscal year 2020 out of surplus funds only, as determined by the director of lottery,
accrued from the fiscal year ending June 30, 2019, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2019.

In the event that surplus revenues available from the fiscal year ending June 30, 2019, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

391-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508

1 Senior Nutrition Vehicle Replacement –
2 Lottery Surplus ......................  ###### $ 1,000,000
3 In-Home Services and Nutrition for Senior Citizens –
4 Lottery Surplus ......................  ###### 750,000
5 Senior Services Medicaid Transfer –
6 Lottery Surplus ......................  68199 16,000,000
7 Total................................. $ 17,750,000
8 Total TITLE II, Section 10 –
9 Surplus Accrued ..................... $ 17,750,000

Sec. 11. Appropriations from state excess lottery revenue surplus accrued. — The following item is hereby appropriated from the State Excess Lottery Revenue Fund, and is to be available for expenditure during the fiscal year 2020 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2019, subject to the terms and conditions set forth in this section.
It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2019.

In the event that surplus revenues available from the fiscal year ending June 30, 2019, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

392-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2020 Org 0511

Medical Services –
Lottery Surplus ...............68100 $ 17,000,000
Total TITLE II, Section 11 –
Surplus Accrued ...................... $ 17,000,000

Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2020 appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2 and 3, and W.Va. Code §11B-2, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

During Fiscal Year 2020, the following funds are hereby available and are to be transferred to the appropriate
funds as specified from available balances per the following:

393-Attorney General

Consumer Protection Recovery Fund

(WV Code Chapter 46A)

Fund 1509 FY 2020 Org 1500

1 Directed Transfer ......................... 70000 $ 3,400,000

2 From the above appropriation for Directed Transfer (Fund 1509, appropriation 70000), $1,000,000 shall be transferred to the West Virginia State Police – Forensic Laboratory Fund (Fund 6511) and $2,400,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

394-Department of Administration

Premium Tax Savings Fund

(WV Code Chapter 29)

Fund 2367 FY 2020 Org 0218

1 Directed Transfer ......................... 70000 $ 6,149,802

2 The above appropriation for Directed Transfer (Fund 2367, appropriation 70000) shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

7 Total TITLE II, Section 12 – Special Revenue ......................... $ 9,549,802

Sec. 13. State improvement fund appropriations. —

Bequests or donations of nonpublic funds, received by the
Governor on behalf of the state during the fiscal year 2020, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2020 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 14. Specific funds and collection accounts. — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 15. Appropriations for refunding erroneous payment. — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.
Sec. 16. Sinking fund deficiencies. — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia Housing Development Fund which is under the supervision and control of the Municipal Bond Commission as provided by W.Va. Code §31-18-20b, or in the funds of the Municipal Bond Commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the Municipal Bond Commission as may be necessary for these purposes.

The Municipal Bond Commission shall reimburse the state of West Virginia through the Governor from the first remittance collected from the West Virginia Housing Development Fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 17. Appropriations for local governments. — There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 18. Total appropriations. — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations,
buildings, equipment, other assets, land, and capital outlay,
where not otherwise specifically provided and except as
otherwise provided in TITLE I – GENERAL
PROVISIONS, Sec. 3.

Sec. 19. General school fund. — The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is
appropriated for expenditure in accordance with W.Va.
Code §18-9A-16.

TITLE III – ADMINISTRATION

Sec. 1. Appropriations conditional. — The
expenditure of the appropriations made by this act, except
those appropriations made to the legislative and judicial
branches of the state government, are conditioned upon the
compliance by the spending unit with the requirements of
Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have
been absorbed by or combined with other spending units, it
is the intent of this act that appropriations and
reappropriations shall be to the succeeding or later spending
unit created, unless otherwise indicated.

Sec. 2. Constitutionality. — If any part of this act is
declared unconstitutional by a court of competent
jurisdiction, its decision shall not affect any portion of this
act which remains, but the remaining portion shall be in full
force and effect as if the portion declared unconstitutional
had never been a part of the act.
AN ACT supplementing and amending by adding a new appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Revenue, State Budget Office, Fund 0595, fiscal year 2019, organization 0703, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised 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 remains 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 0595, fiscal year 2019, organization 0703, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE

76 – State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2019 Org 0703

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>2a PEIA Rainy Day Fee</td>
<td>01201 $105,000,000</td>
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</table>

The above appropriation for PEIA Rainy Day Fee (Fund 0595, appropriation 01201) may be allocated and transferred to various General Revenue Funds to be used for payment of the PEIA Rainy Day Fee assessed by the Secretary of Revenue authorized in §5-16-27 of the code. Receiving agencies shall transfer the allocated funds to the PEIA Rainy Day Fund prior to the close of the fiscal year 2019. Any balance remaining in the appropriation after allocation shall be transferred to the PEIA Rainy Day Fund prior to the close of the fiscal year 2019.
AN ACT supplementing and amending by increasing existing items of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Veterans’ Assistance, Department of Veterans’ Assistance, fund 0456, fiscal year 2019, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised 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 remains 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 0456, fiscal year 2019, organization 0613, be
supplemented and amended by increasing existing items of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

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

**DEPARTMENT OF VETERANS’ ASSISTANCE**

83 – *Department of Veterans’ Assistance*  
(WV Code Chapter 9A)

Fund 0456 FY 2019 Org 0613

<table>
<thead>
<tr>
<th></th>
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<th>General Revenue Fund</th>
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<tr>
<td>1</td>
<td>7 Veterans’ Nursing Home (R)</td>
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<td>2</td>
<td>12 Veterans’ Grant Program (R)</td>
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**CHAPTER 34**

(H. B. 2667 - By Hanshaw (Mr. Speaker) and Delegate Miley)  
[By Request of the Executive]

[Passed March 7, 2019; in effect from passage.]  
[Approved by the Governor on March 14, 2019.]

AN ACT supplementing and amending by increasing an existing item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Division of Corrections, Correctional Units, Fund 0450, fiscal year 2019, organization
0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised 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 remains 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 0450, fiscal year 2019, organization 0608, 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

68 – Division of Corrections -

Correctional Units

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2019 Org 0608

<table>
<thead>
<tr>
<th></th>
<th>General Revenue Fund</th>
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<td>4</td>
<td>Current Expenses (R)</td>
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CHAPTER 35

(H. B. 2668 - By Hanshaw (Mr. Speaker) and Delegate Miley)
[By Request of the Executive]

[Passed February 21, 2019; in effect from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT supplementing and amending by increasing an existing item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, Fund 0226, fiscal year 2019, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised 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 remains 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 0226, fiscal year 2019, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:

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

DEPARTMENT OF ADMINISTRATION

27 – Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2019 Org 0221

General Appropriation Revenue Fund

6 Appointed Counsel Fees (R).... 78800 $ 15,300,000

CHAPTER 36

(H. B. 3135 - By Delegates Criss, Cowles, Ellington, Espinosa, Hardy, Rowan, Barrett, Hartman, Longstreth, Rowe and Williams)

AN ACT expiring funds to the balance of the Department of Commerce, Development Office – Entrepreneurship and Innovation Investment Fund, fund 3014, fiscal year 2019, organization 0307, in the amount of $500,000, from the Auditor’s Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200, by supplementing and amending chapter 12, Acts of the Legislature, 2018, known as the Budget Bill.

Whereas, The Legislature finds that the account balance in the Auditor’s Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200 exceeds that which is
necessary for the purpose for which the account was established; therefore

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

That the balance of funds available for expenditure in the fiscal year ending June 30, 2019, to the Auditor’s Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200, be decreased by expiring the amount of $500,000 to the Department of Commerce, Development Office – Entrepreneurship and Innovation Investment Fund, fund 3014, fiscal year 2019, organization 0307.

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**CHAPTER 37**


[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6a, §19-2C-6c, §19-2C-8, §19-2C-8a, §19-2C-9, and §19-2C-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-2C-5b, all relating to amending and updating the laws relating to auctioneers by providing for definitions; providing for certain exemptions to license requirements; providing for additional rule-making authority; providing for June 30 as the date all licenses expire; establishing certain conditions for auctioneers to continue working after license expiration; providing for record retention requirements; providing for exams held a minimum of two times each year; providing for applicants for auctioneer licenses to submit to background checks; providing for authorization to conduct and use information relating to
background checks; providing for confidentiality of background checks; establishing certain conditions for apprentice auctioneers to continue working after license expiration; adjusting residency requirements for members of the board of review; eliminating certain outdated language; providing for reciprocal licensure; increasing civil penalties for violations of this article; increasing penalties commissioner may be assessed against an unlicensed auctioneer; providing for additional circumstances to suspend, deny, or revoke a license; providing for written contracts with auctioneers and owners of property; providing for auction houses and business entities to enter into contracts with auctioneers and owners of property; and providing for certain unlawful advertising practices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

1 For the purposes of this article:

2 (a) “Absolute auction” means the sale of real or personal property at auction whereby every item offered from the block is sold to the highest bidder without reserve and without the requirements of a minimum bid or other conditions which limit the sale other than to the highest bidder.

8 (b) “Auctioneer” means a person who sells goods or real estate at public auction for another on commission or for other compensation.

11 (c) “Commissioner” means the Commissioner of Agriculture of West Virginia.

13 (d) “Department” means the West Virginia Department of Agriculture.
(e) “Escrow account” means a separate custodial or trust fund account maintained by the auctioneer.

(f) "Estate auction" means the sale at auction of property of a specified deceased person or the property of a specified living person’s estate. Estate auctions may contain property other than that of the specified living or deceased person. However, the inclusion of additional property must be included in all advertising and auction announcements.

(g) “In this state” means that an auction satisfies one of the following criteria:

(1) The auctioneer performed the auction within the borders of the State of West Virginia;

(2) The auctioneer is selling items for a person located in the State of West Virginia;

(3) The auctioneer is auctioning real or personal property located in the State of West Virginia;

(4) The auctioneer delivers purchased property to a location in the State of West Virginia; or

(5) The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.

(h) “Public auction” or “auction” means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchasers and the property sold to the highest bidder.

§19-2C-2. License required; exceptions.

(a) Except as provided in subsection (b) of this section, no person shall conduct an auction as an auctioneer in this state unless he or she shall have first obtained from the commissioner a license therefor.

(b) The provisions of this section do not apply to:
(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;

(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous 12-month period;

(3) Persons conducting sales pursuant to a deed of trust;

(4) Fiduciaries of estates when selling real or personal property of the estate;

(5) Persons conducting sales without compensation on behalf of charitable, religious, fraternal, or other nonprofit organizations: Provided, That the commissioner shall promulgate rules to limit the number of charitable auctions an exempt person may perform in a 12-month period;

(6) Persons properly licensed pursuant to the provisions in §30-40-1 et seq. of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent’s estate: Provided, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of §19-2A-1 et seq. of this code, where the sale is confined solely to livestock, poultry, and other agriculture and horticulture products; and

(7) Persons listing items online for sale via a platform that establishes a fixed time for the conclusion of the sale without extension: Provided, That the commissioner may further define this exemption in legislative rules.

§19-2C-3. Procedure for license; Department of Agriculture as statutory agent for licensees.
(a) An applicant for an auctioneer license shall:

1. Apply on forms prescribed by the commissioner;
2. Pay a nonreturnable application fee and a license fee; and, upon successful completion of the application process, a license fee; and
3. File a bond as required by this article.

(b) The commissioner shall, within 30 days after the receipt of an application, notify the applicant of his or her eligibility to be examined at the next regularly scheduled examination, as well as the date of the examination.

(c) If the license is denied, the commissioner shall refund the license fee submitted with the application to the applicant.

(d) All licenses expire on June 30 of each year: Provided, That an auctioneer may continue to perform auctions for up to 30 days after June 30, so long as he or she has submitted the required paperwork to renew his or her auctioneer license: Provided, however, That licenses issued in 2019 shall continue to be active through June 30, 2020. A license may be renewed upon the payment of the annual renewal fee within 60 days of the expiration date. Renewals received more than 60 days after the expiration date are subject to a late renewal fee in addition to the annual renewal fee.

(e) A license that has been expired for more than two years cannot be renewed until the auctioneer or apprentice auctioneer takes the written and oral examination, pays the examination fee and complies with the other requirements of this article.

(f) Where an auctioneer or apprentice auctioneer requires a duplicate or replacement license or a license reflecting a change in information, the auctioneer or apprentice auctioneer shall submit the fee with the request.
(g) The State Department of Agriculture is the agent for the purpose of service of process on a licensed auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every licensed auctioneer, by virtue of his or her application for a license, shall be considered to have consented to the statutory agency.

§19-2C-5. Requirements for auctioneer license; duties of licensee.

(a) A person seeking an auctioneer license shall submit satisfactory evidence to the commissioner showing that he or she:

1. Has successfully completed the written and oral examinations required by this article;
2. Has a good reputation;
3. Is of trustworthy character;
4. Has met the apprenticeship requirements set forth in this article, if applicable;
5. Is a citizen of the United States; and
6. Has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(b) A licensee shall:

1. Promptly produce for inspection his or her license at all sales conducted by or participated in by the licensee when requested to do so by any person; and
2. Keep complete and accurate records of all transactions engaged in for a period of three years from the date on which the sale was completed.

(c) For the purposes of this section, the term “record” includes, but is not limited to:
(1) Copies of signed contracts, including the names of buyers and their addresses;

(2) Clerk sheets showing items sold, including buyers numbers or names, and the selling prices; and

(3) Final settlement papers.

(d) The records of the auctioneer shall be open to inspection by the commissioner or his or her authorized representative.

(e) A person who has an auctioneer license is considered to be a professional in his or her trade.

§19-2C-5a. Examinations of applicants.

(a) Examinations shall be held a minimum of two times each year, at a time and place to be designated by the commissioner or his or her authorized representative.

(b) An individual auctioneer applicant may take the examination for auctioneer or apprentice auctioneer at the regularly scheduled time and place.

(c) The apprentice auctioneer’s examination shall consist of a written examination.

(d) The auctioneer’s examination shall consist of both a written and oral examination. The passing grade for any written or oral examination shall be 70 percent out of 100 percent. The oral portion will be scored by the commissioner or his or her authorized representative.

(e) If the applicant fails either the written or oral portion of the examination, no license will be issued and he or she may not be administered the examination again until the next regularly scheduled examination date.

(f) Only one notice of the examination will be mailed or emailed to the applicant at the address given on the application. If the applicant fails to appear for an
examination, except as provided in this subsection, a new application and a new fee shall be required. No fee will be returned, except when the applicant fails to take the examination because of illness evidenced by a doctor’s certificate sent to the commissioner. If excused because of illness, the applicant shall be admitted to the next scheduled examination without paying an additional fee. No applicant may be excused from taking the scheduled examination for any reason other than illness, unless in the judgment of the commissioner the applicant would suffer undue hardship by not being excused.

(g) An examination fee and any other fees required by this article, shall be collected from each person taking an examination. If the applicant has previously paid the examination fee and successfully completed the apprentice auctioneer’s examination, no additional examination fee will be required to take the auctioneer’s examination.

(h) If the commissioner determines that an applicant does not qualify for a license, he or she shall notify the applicant by certified mail. The notice shall state:

(1) The reason for the refusal to grant a license; and

(2) The applicant’s right to appeal the commissioner’s decision within 20 days of receipt of the notice.

(i) An examination is not required for the renewal of a license, unless the license has been revoked or suspended, or has expired. If the license was revoked or suspended, then the commissioner may require a person to take and pass a written or oral examination. If a license has been expired for more than two years and was not revoked or suspended, then the applicant is required to take and pass any written and oral examinations required by the commissioner.

§19-2C-5b. Background checks required.

(a) A person applying for a license pursuant to §19-2C-5, §19-2C-6, or §19-2C-6c of this code may be required to
submit to a state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(f) The commissioner may not disqualify an applicant for initial licensure, certification or registration because of a prior criminal conviction that has not been reversed unless
that conviction is for a crime that bears a rational nexus to
the occupation requiring licensure.

(g) The commissioner may not use crimes involving
moral turpitude in making licensure, certification or
registration determinations.

(h) If an applicant is disqualified for licensure, certification or registration because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: Provided, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the individual board or licensing authority.

(i) An individual with a criminal record who has not previously applied for licensure, certification or registration may petition the commissioner at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a license or other authorization. This petition shall include sufficient details about the individual’s criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The commissioner shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The licensing authority may charge a fee to recoup its costs for each petition.

(j) Nothing in this section alters the standards and procedures the commissioner uses for evaluating licensure, certification or registration renewals.
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(k) The commissioner shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

(l) The provisions of this section, enacted during the 2019 Regular Session of the Legislature, shall not apply to current licensees who maintain active licensure, but shall apply to individuals currently holding an apprentice auctioneer license who are applying for an auctioneer license, or to any current license holder whose license lapses and who is required to reapply.

§19-2C-6. Requirements for apprentice auctioneer license.

(a) A person seeking an apprentice auctioneer license shall furnish to the commissioner, on forms provided by the commissioner, satisfactory proof that he or she:

(1) Has a good reputation;

(2) Is a trustworthy character;

(3) Is a citizen of the United States; and

(4) Has taken and passed a written examination relating to the skills and knowledge of the statutes and rules governing auctioneers.

(b) An apprentice auctioneer may take the examination to become an auctioneer after completing one of the following:

(1) Serving a two-year apprenticeship under a licensed auctioneer; or

(2) Attending a nationally accredited graduate school of auctioneering, approved by the commissioner, and serving an apprenticeship of six months.
(c) Before an apprentice auctioneer may take the auctioneer’s examination, the apprentice auctioneer shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer. The commissioner may waive the requirements of this section, on an individual basis, upon the presentation of written evidence that the applicant has educational training or exceptional experience in the auctioneering profession and that the applicant has been unable to obtain sponsorship by a licensed auctioneer: Provided, That the commissioner may not waive apprenticeship requirements for an applicant without the concurrence of the board of review.

(d) When an apprentice auctioneer is discharged or terminates his or her employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the commissioner. No discharged or terminated apprentice auctioneer may thereafter perform any acts under the authority of his or her license until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license may be issued to an apprentice auctioneer for the same period of time.

(e) The commissioner may not issue an apprentice auctioneer license until bond has been filed. All apprentice auctioneer licenses expire on June 30 of each year, but are renewable upon the payment of the annual fee: Provided, That an apprentice auctioneer may continue to perform auctions for up to 20 days after June 30, so long as he or she has submitted the required paperwork to renew his or her apprentice auctioneer license: Provided, however, That licenses issued in 2019 shall continue to be active through June 30, 2020.

(f) A person cannot be licensed as an apprentice auctioneer for more than three years without applying for an auctioneer license. Should an apprentice auctioneer allow the three year limit to lapse, then the apprentice auctioneer
shall be required to take the apprentice examination and meet all the requirements of this article.

§19-2C-6a. Investigation of complaints; board of review.

(a) The Department of Agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer’s or apprentice auctioneer’s license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, establishes probable cause. Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all of the facts of the complaint and recommend a course of action to the commissioner.

(b) The board of review shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall consist of three members, each appointed for a staggered three-year term. Two members of the board of review shall be licensed auctioneers in West Virginia and residents of this state and shall have been licensed and been practicing the profession of auctioneering for five years immediately preceding their appointment. The third member shall be a lay person from the commercial or agricultural community who has utilized services of auctioneers for at least three years. No more than two board members shall be from any one congressional district and no more than two members shall be from the same political party. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations. There shall be no limit on the number of consecutive terms a member may serve on the board. The Governor is authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.
§19-2C-6c. Procedure for obtaining reciprocal or nonresident auctioneer’s and apprentice auctioneer’s license.

(a) To qualify for a license by reciprocity, the applicant must show evidence of licensing in another state for a period of one year preceding the date of application. The licensing may have been as an apprentice auctioneer or as an auctioneer. Provided this qualification is met and the applicant meets all the other requirements as required by this article and by regulation, he or she shall be licensed either as an apprentice auctioneer or as an auctioneer, based on a nonresident license, as the case may be.

(b) When an applicant’s resident state has no licensing law for auctioneers or the applicant’s resident state has no written or oral examination associated with its licensing requirements, the Department of Agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by the statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.


(a) Criminal penalties. — Any person, firm, association or corporation violating a provision of this article or the rules, is guilty of a misdemeanor and, upon conviction, shall be fined not less than $250 nor more than $500 for the first offense, and not less than $500 nor more than $1,000 for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.
(b) Civil penalties. — Any person violating a provision of this article or the rules, may be assessed a civil penalty by the commissioner.

(1) In determining the amount of the civil penalty, the commissioner shall give due consideration to the history of previous violations by the person, the seriousness of the violation, and the demonstrated good faith of the person charged in attempting to achieve compliance with this article before and after written notification of the violation. The commissioner may assess a penalty of not more than $500 for a first offense, and not more than $1,000 for each second and subsequent offense.

(2) In addition to a penalty assessed against an unlicensed auctioneer for practicing without the required license, the commissioner may assess penalties against an unlicensed auctioneer for violations of the provisions of this article that would have applied to the individual’s conduct had he or she held the required license.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was probable cause for such action.

§19-2C-8a. Revocation.
In addition to the penalties in section eight of this article, the commissioner may, by order, suspend, deny or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer’s or apprentice auctioneer’s license;

(c) Engaging in a continued or flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within 15 days of conviction;

(f) Violating any other laws related to the conduct of auctions or auctioneering;

(g) Engaging in any conduct of an auctioneer which demonstrates dishonesty or incompetency;

(h) Engaging in any other conduct that constitutes fraudulent or dishonest dealing;

(i) Engaging in any other unethical conduct in the contexts of his or her work as an auctioneer; and

(j) Acting as an attorney for a client.
Any auctioneer or apprentice auctioneer who has had his or her license suspended or revoked shall not be issued another such license until a period not to exceed two years has elapsed from the date of revocation. The commissioner may also require the successful completion of the examinations required for an auctioneer’s license or an apprentice auctioneer’s license.

§19-2C-9. Written contracts.

(a) No person may act as an auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has entered into a written contract in duplicate with the owner or consignor of the property to be sold. No apprentice auctioneer may be authorized to enter into a contract without the written consent of his or her sponsoring auctioneer. All contracts shall be in the name of and on behalf of the sponsoring auctioneer.

(b) The written contract shall:

(1) State the terms and conditions upon which the auctioneer receives or accepts the property for sale at auction;

(2) Be between the auctioneer and the seller;

(3) Be made in duplicate;

(4) Be retained by the auctioneer for a period of three years from the date of final settlement;

(5) Be furnished to each person that entered into the contract;

(6) State that an apprentice auctioneer may not contract directly with a client but only through his or her sponsoring auctioneer;
(7) State that an apprentice auctioneer may not engage in a sale with an auctioneer by whom he or she is not sponsored without first obtaining the written consent of his or her sponsoring auctioneer;

(8) Have a prominent statement indicating that the auctioneer is licensed by the Department of Agriculture and is bonded in favor of the State of West Virginia; and

(9) Include the following information:

(A) The name, address and phone number of the owner of the property to be sold or the consignor;

(B) The date of the auction or a termination date of the contract;

(C) The terms and conditions of the auction;

(D) The location of the auction;

(E) The date the owner or consignor is to be paid;

(F) A statement establishing the responsibility for bad checks, debts and unpaid auction items;

(G) A detailed list of all fees to be charged by the auctioneer, including commissions, rentals, advertising and labor;

(H) A statement of the auctioneer’s policy regarding absentee bidding;

(I) A statement above the owner’s signature line: “I have read and accept the terms of the contract”; and

(J) A statement indicating that an explanation of settlement of the auction, or settlement sheet, will be provided to the owner or consignor at the end of the auction.

(c) As a condition of entering into a contract, the auctioneer shall be provided with proof or certificate of
ownership for all titled property, or assurances of ownership for all other property. The auctioneer shall have such proof or certificate or ownership with him or her at the time the auction is held.

(d) Notwithstanding the provisions of subsection (a) of this section, an auctioneer may conduct an auction on behalf of an auction house or other business entity without having entered into a contract directly with the seller of the auctioned goods, so long as the following conditions are satisfied:

(1) The auction house or business must have a written contract with both the seller of the goods and the auctioneer;

(2) The contract between the auction house or business entity must satisfy all the requirements set forth in subsection (b) of this section; and

(3) The auction house or business entity must file with the commissioner a bond satisfying the requirements of §19-2C-4 of this code.

(e) By entering into contracts with sellers of property pursuant to this section, the owners and partners of any auction house or business entity agree to submit to the jurisdiction of the commissioner and the Board of Review and are subject to the penalties set forth in §19-2C-8 of this code.

§19-2C-10. Advertising.

In advertising an auction sale by any licensed auctioneer, the principal auctioneer or auctioneers who physically conduct the sale shall be listed prominently in such advertising as used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the sale shall be the person or persons who call for, accept and close bids on the majority of items offered for sale.

Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed.
The auctioneer’s name and license number shall be displayed in equal prominence with the name of the apprentice auctioneer and license number in such advertisement.

Nothing in the provisions of this article shall be construed so as to prohibit any other auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding the failure to list the name of the other auctioneer in any advertising associated with such auction.

It is unlawful to conduct or advertise that an auction is absolute if minimum opening bids are required or other conditions are placed on the sale that limit the sale other than to the highest bidder.

No property other than the property of a specified deceased person or the property of a specified living person’s estate may be sold at auction if the auction is conducted or advertised only as an estate auction. However, property other than that of the specified estate may be sold at the sale if all advertisements for the sale specify that items will be sold that do not belong to the estate and those items are identified at the sale.

CHAPTER 38

(S. B. 453 - By Senators Azinger and Cline)

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to background checks of certain financial institutions; allowing commissioner to accept alternate report forms in limited circumstances for certain
non-United States based principals or owners; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVISION OF FINANCIAL INSTITUTIONS.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by §31A-3-1 et seq. of this code, the commissioner has supervision and jurisdiction over state banks, regulated consumer lenders, residential mortgage lenders, and brokers licensed pursuant to §31-17-1 et seq. of this code, credit unions, and all other persons now or hereafter made subject to his or her supervision or jurisdiction. All powers, duties, rights, and privileges vested in the division are hereby vested in the commissioner. He or she shall be the chief executive officer of the Division of Financial Institutions and is responsible for the division’s organization, services, and personnel and for the orderly and efficient administration, enforcement, and execution of the provisions of this chapter and all laws vesting authority or powers in, or prescribing duties or functions for, the division or the commissioner.

(b) The commissioner shall:

(1) Maintain an office for the division and there keep a complete record of all the division’s transactions, of the financial conditions of all financial institutions, and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the Division of Financial Institutions. No person shall divulge any information contained in any records except as authorized in this subdivision in response
to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered necessary to protect the confidential nature of the records, the financial integrity of the financial institution, or the person to which the records relate, and the legitimate privacy interests of any individual named in the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may exercise reasonable discretion as to the time, manner, and extent the other records in his or her office and the information contained in the records are available for public examination;

(2) Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and all other laws which he or she is required to enforce and of any rule promulgated or order issued thereunder; and

(4) Require a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national, or international criminal history check, of each:

(A) Applicant seeking approval to charter and/or control a state bank, state credit union, or a foreign bank state agency or representative office;

(B) Applicant seeking a license to engage in the business of money transmission, currency exchange, or other activity regulated under §32A-2-1 et seq. of this code;
(C) Applicant subject to the commissioner’s supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending, or brokering; and

(D) Division of Financial Institutions regulatory employee applicants.

(E) The provisions of this subdivision are not applicable where the applicant is a company or entity already subject to supervision and regulation by the Federal Reserve Board or other federal bank, thrift, or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to the supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal Securities and Exchange Commission whose stock is publicly traded on a registered exchange or through the National Association of Securities Dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background is not required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for the purpose of facilitating the acquisition of another bank pursuant to §31A-4-5 of this code. The requirements of this subdivision are applicable to the principals of the applicant where a nonexempt applicant under this subdivision is not a natural person. As used in this subdivision, the term “principals” means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee, or other person controlling the conduct of the affairs of a licensee. A person controlling 10 percent or more of the stock of any corporate applicant shall be considered to be a principal under this provision. Notwithstanding any other provision of this code to the contrary, the commissioner may determine alternate acceptable forms for background check information for direct or indirect principals of a licensee or applicant for a mortgage lender or broker license or a money transmission license who are not residents of the United States if such
licensee or applicant also has owners or principals who are residents of the United States and the division has been provided adequate background information, as provided in this subdivision, for such owners or principals of the licensee or applicant who are United States residents. The commissioner may 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 related to criminal background investigations and fingerprints of persons subject to this subsection.

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.

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.

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner may:

(1) Provide for the organization of the division and the procedures and practices of the division and implement the procedures and practices by the promulgation of rules and forms as appropriate and the rules shall be promulgated in accordance with §29A-3-1 et seq. of this code;

(2) Employ, direct, discipline, discharge, and establish qualifications and duties for all personnel for the division, including, but not limited to, examiners, assistant
examiners, conservators, and receivers, establish the amount and condition of bonds for the personnel he or she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all personnel subject to and under the classified service of the state personnel division;

(3) Cooperate with organizations, agencies, committees, and other representatives of financial institutions of the state in connection with schools, seminars, conferences, and other meetings to improve the responsibilities, services, and stability of the financial institutions;

(4) In addition to the examinations required by §31A-2-6 of this code, inspect, examine, and audit the books, records, accounts, and papers of all financial institutions and any third-party vendor providing information technology services to financial institutions at such times as circumstances in his or her opinion may warrant;

(5) Call for and require any data, reports, and information from financial institutions under his or her jurisdiction, at such times and in such form, content, and detail considered necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by §31A-3-1 et seq. of this code, supervise the location, organization, practices, and procedures of financial institutions and, without limitation on the general powers of supervision of financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules prescribed by the commissioner and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;
(C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity, and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by §31A-3-1 et seq. of this code, receive from any person or persons and consider any request, petition, or application relating to the organization, location, conduct, services, policies, and procedures of any financial institution and to act on the request, petition, or application in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by §31A-2-4(b)(3) of this code, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or
subpoenas duces tecum shall be issued, served, and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;

(9) Issue declaratory rulings in accordance with the provisions of §29A-4-1 of this code;

(10) Study and survey the location, size, and services of financial institutions, the geographic, industrial, economic, and population factors affecting the agricultural, commercial, and social life of the state, and the needs for reducing, expanding, or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) Implement all of the provisions of this chapter, except the provisions of §31A-3-1 et seq. of this code, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of §29A-3-1 et seq. of this code;

(12) Implement the provisions of chapter 46A of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of §29A-3-1 et seq. of this code as long as the rules do not conflict with any rules promulgated by the state’s Attorney General;

(13) Foster and encourage a working relationship between the Division of Financial Institutions and financial institutions, credit, consumer, mercantile, and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability, and availability of the services and facilities of financial institutions;
(14) Provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and any other forms and printed materials found by him or her to be helpful to financial institutions, their shareholders, depositors, and patrons and make reasonable charges for the copies;

(15) Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of financial institutions and to no other division personnel the following powers, duties, and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner also is responsible. The commissioner shall:

(A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit, or license of any financial institution except a banking institution in accordance with the provisions of §31A-2-13 of this code; and

(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is
prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance;

(16) Seek and obtain civil administrative penalties against any person who violates this chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the commissioner or Board of Banking and Financial Institutions in an amount not more than $5,000 per day for each violation: Provided, That all of the pertinent provisions of §29A-5-1 et seq. of this code shall apply to any assessment of a penalty under this subsection;

(17) Receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove these applications;

(18) Expend funds in order to promote consumer awareness and understanding of issues related to residential mortgage lending. In furtherance of this duty, there is established in the State Treasury a special revenue account to be known as the Consumer Education Fund, which shall be administered by the Commissioner of Financial Institutions. Ten percent of all civil administrative penalties collected by the Division of Financial Institutions during each fiscal year shall be deposited into the fund and may be expended by the commissioner to promote consumer awareness and understanding of issues related to residential mortgage lending. The account shall be a special revenue account and may be invested and retain all earnings and interest. Any remaining balance less than $500,000, including accrued interest, in the fund at the end of the fiscal year shall not revert to the General Revenue Fund, but shall remain in the account. Any balance which exceeds $500,000 as of June 30, 2012, and each year thereafter, shall revert to the General Revenue Fund; and

(19) Take other action as he or she may consider necessary to enforce and administer the provisions of this chapter, except the provisions of §31A-3-1 et seq. of this code, and all other laws which he or she is empowered to
administer and enforce and apply to any court of competent jurisdiction for appropriate orders, writs, processes, and remedies.

CHAPTER 39
(Com. Sub. for S. B. 603 - By Senator Tarr)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §32A-2-3 of the Code of West Virginia, 1931, as amended, relating to persons engaged in the business of currency exchange, transportation, or transmission; and adding exemptions.

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;

(10) The North American Securities Administrators Association and any subsidiaries, which administer the Electronic Filing Depository system on behalf of state securities regulators; and

(11)(A) Persons operating a payment system that provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers;

(B) Contracted service providers of an entity set forth in §32A-2-3(a)(1) of this code that provide processing, clearing, or settlement services in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers; or

(C) Persons facilitating payment for goods or services (not including currency transmission or money transmission itself) pursuant to a contract with the payee and either payment to the person or persons facilitating the payment processing satisfies the payor’s obligation to the payee or that obligation is extinguished.

(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 §32A-2-27 of this code, 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 §30-18-1 et seq. of this code.

CHAPTER 40

(Com. Sub. for H. B. 2538 - By Delegates Nelson, Pushkin, Hornbuckle, McGeehan, Householder, Barrett, Fluharty, Wilson, Byrd, Campbell and Queen)

[Passed March 5, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]
penalize, incentivize or otherwise impair a financial institution from providing services under the Act in certain instances; providing that no cause of action exists against the Treasurer and state officers and employees involved in cannabis-related banking or financial services in their personal capacities in certain circumstances; and providing that the state will defend and indemnify the Treasurer and any state officers and employees involved in cannabis-related banking services provided within the scope of their duties or employment in accordance with the West Virginia Medical Cannabis Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-14. Banking Services for Medical Cannabis.

(a) The Legislature finds and declares that the inability to provide banking services needed to collect and remit the fees, penalties, and taxes authorized under the West Virginia Medical Cannabis Act has delayed the implementation and is precluding access by the patients potentially eligible to be prescribed medical cannabis and investment by the persons and entities interested in providing services under the Act. The purpose of this section is to provide a solution to the banking problems encountered by the state in connection with the Act.

(b) The following words when used in this section shall have the following meanings, unless the context clearly indicates otherwise,

(1) “Act” means the West Virginia Medical Cannabis Act in §16A-1-1 et seq. of this code;

(2) “Financial institution” means a bank, national banking association, a non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union or a savings bank;
(3) “Non-bank financial institution” means a financial institution that does not have a banking license or is not supervised by a state, national or international banking regulatory agency. If a non-bank financial institution is a selected financial institution, it shall post a collateral bond of not less than 125 percent of the amounts on deposit with the Treasurer in lieu of any other collateral requirement in this article.

(4) “Selected financial institution” means a financial institution selected by the Treasurer under this section to receive, invest, and disperse the fees, penalties, and taxes authorized under the Act;

(5) “Treasurer” means the State Treasurer.

(c) The Treasurer shall select by competitive bid one or more financial institutions to provide banking services for the fees, penalties, and taxes collected under the Act and is authorized to pay any fees charged by a selected financial institution. A contract awarded by the Treasurer under the section may be extended as long as the Treasurer determines an extension is in the best interest of the state. A financial institution selected shall meet the requirements of this chapter for a state depository and any other applicable requirements of this section.

(d) The Medical Cannabis Program Fund authorized in §16A-9-2 of this code shall receive all civil penalties collected under §16A-12-8 of this code. Any method of receipt, remittance, payment, or transfer authorized by the Treasurer are acceptable under the Act.

(e) The Treasurer’s office may authorize the Medical Cannabis Program Fund be held in one or more accounts at a selected financial institution outside the treasury until the Treasurer is able to lawfully transfer moneys to the main disbursement account of the state. Moneys in the Medical Cannabis Program Fund may be invested by a financial institution or the West Virginia Board of Treasury Investments and earnings shall accrue to the Medical Cannabis Program Fund.
(f) The Treasurer may charge fees for providing banking services under the Act, including without limitation, fees for expenses incurred, oversight, and compliance. The Treasurer’s Medical Cannabis Fund is hereby created to receive all fees charged by the Treasurer. The Treasurer may authorize the Treasurer’s Medical Cannabis Fund held in an account at a selected financial institution outside the treasury until the Treasurer is lawfully able to transfer moneys to the main disbursement account of the state. When the financial institution holding the state concentration account will accept the medical cannabis funds of the state, the Treasurer shall transfer the funds and close the accounts created under this section. Moneys in the Treasurer’s Medical Cannabis Fund shall be expended for the expenses incurred, oversight and compliance, and may be invested by a financial institution or the West Virginia Board of Treasury Investments with earnings accruing to the fund.

(g) The Enterprise Resource Planning Board shall configure wvOASIS to allow deposit in, investing moneys in, and making payments from the accounts established by the Treasurer pursuant to this section at a selected financial institution.

(h)(1) Actions taken under and in accordance with this section shall not be considered unlawful under any provision of this code.

(2) The Commissioner of Financial Institutions shall not prohibit, penalize, incentivize, or otherwise impair a financial institution from providing services to a person or entity involved in a medical cannabis-related business functioning under the Medical Cannabis Act solely because the person or entity is a grower, processor, dispensary, owner of any proportion, operator, employee, patient, caregiver, family or household member, financial broker, or other similar person or entity of a medical cannabis-related business operating in accordance with the Medical Cannabis Act: Provided, That nothing in this section shall prohibit the Commissioner of Financial Institutions from enforcing applicable laws and regulations related to ensuring the safety and soundness of a financial institution.
(3) No cause of action exists against the Treasurer and the state officers and employees involved in cannabis-related banking or financial services, in their personal capacities, while acting within the scope of duties contemplated by this Article or the Act. Any recovery for claims or actions arising from this Article is limited solely to the proceeds of available insurance coverage.

(4) To the extent permitted by law, the State of West Virginia shall defend the Treasurer and the state officers and employees involved in cannabis-related banking or financial services against any claims, charges, liabilities or expenses and shall indemnify and hold harmless the Treasurer and any state employee involved in cannabis-related banking or financial services provided within the scope of their duties or employment in accordance with the Act, including without limitation, defense in any state, federal, or local court and payment of the amount of any judgment obtained, damages, legal fees and expenses, and any other expenses incurred.

CHAPTER 41

(H. B. 2968 - By Delegates Nelson, Espinosa, Barrett, Byrd, McGeehan, Criss and Porterfield)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §31A-8-12b of the Code of West Virginia, 1931, as amended, relating to adding remote service units to the definition of customer bank communication terminal; defining remote service unit; and allowing national banks to operate remote service units in this state pursuant to federal regulation.

Be it enacted by the Legislature of West Virginia:
ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

(a) Any banking institution as defined in §31A-1-2 of this code, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon 10 days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:

(1) Shall make the customer bank communication terminal available for use by other banking institutions; and

(2) May make the customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. The customer bank communication terminals are not branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; nor do the operation of such customer bank communication terminals to communicate with and permit financial transactions to be carried out through a nonexclusive access interchange system make any banking institution which is part of such a nonexclusive access interchange system have illegal branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities.

(b) Notwithstanding the provisions of subdivision (1), subsection (a) of this section, a customer bank communication terminal located on the premises of the principal office or branch bank of a banking institution or
on the premises of an authorized off-premises facility need not be made available for use by any other banking institution or its customers.

(c) For purposes of this section, “customer bank communication terminal” means any electronic device or machine owned, leased, or operated by a bank, together with all associated equipment, structures and systems, including, without limitation, remote service units, point of sale terminals, through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer’s benefit. Personal computers, telephones and associated equipment which enable a bank customer to conduct banking transactions at their home or office through links to their bank’s computer or telephone network, do not constitute a “customer bank communication terminal” under this section. All transactions initiated through a customer bank communication terminal are subject to verification by the banking institution.

(d) No person, other than: (1) A banking institution authorized to engage in the banking business in this state; or (2) a credit union authorized to conduct business in this state, may operate any automatic teller machine (“ATM”) or automatic loan machine (“ALM”) or remote service unit (“RSU”) located in this state: Provided, That ATM or RSU terminals of out-of-state banks not having branches in this state are allowed to operate to the same extent as a West Virginia bank if a national bank from that state not having branches in West Virginia could do so through a federal preemption of state law.
(e) For the purposes of this section, “remote service unit” means automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money, and includes an unmanned or automated teller machine, an automated loan machine, and an automated device for receiving deposits. A remote service unit may be equipped with a telephone or video device that allows contact with bank personnel.

(f) For the purposes of this section, “point of sale terminal” means a customer bank communication terminal used for the primary purpose of either transferring funds to or from one or more deposit accounts in a banking institution or segregating funds in one or more deposit accounts in a banking institution for future transfer, or both, in order to execute transactions between a person and his or her customers incident to sales, including, without limitation, devices and machines which may be used to implement and facilitate check guaranty and check authorization programs.

(g) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased or operated by nonbanking entities: Provided, That those persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than $50 in excess of the sales transaction purchase amount, is presumed to constitute engaging in the business of banking: Provided, however, That cash withdrawals through a point of sale terminal in excess of $50 is not engaging in the business of banking if the sales transaction is made with the use of a West Virginia check card, as provided in §12-3A-1 et seq. of this code, or with an electronic benefits transfer or other card issued by state spending units to transmit payments of food benefits, temporary assistance to needy families, or other assistance,
benefit or entitlement programs mandated or offered by federal or state government: Provided further, That any retailer, agency or person providing cash withdrawals with a West Virginia check card or an electronic benefits transfer card through a POS terminal is limited to charging a fee for the services in the amount of the higher of $1 or one percent of the amount of cash withdrawn.

(h) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: Provided, That:

(1) Employees of the banking institution may be present at the terminal not located on the premises of an authorized off-premises facility solely for the purposes of installing, maintaining, repairing and servicing same; and

(2) A banking institution may provide an employee to instruct and assist customers in the operation thereof: Provided, That the employee may not engage in any other banking activity.

(i) The commissioner shall prescribe by rule the procedures and standards regarding the installation and operation of customer bank communication terminals, including, without limitation, the procedure for the sharing thereof.
CHAPTER 42

(Com. Sub. for S. B. 3 - By Senators Boso, Clements, Swope, Takubo, Cline and Trump)

[Passed March 5, 2019; in effect from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, and §11-6L-5; to amend said code by adding thereto three new sections, designated §31G-4-4, §31G-4-5, and §31G-4-6; and to amend said code by adding thereto a new chapter, designated §31H-1-1, §31H-1-2, §31H-2-1, §31H-2-2, §31H-2-3, and §31H-2-4, all relating generally to wireless telecommunication technology facilities; providing a special method for valuation of certain wireless technology property for property taxes; defining terms; providing mandated salvage valuation of certain wireless businesses’ property; specifying method for valuation of certain property; requiring initial determination and specifying procedure for protest and appeal of determination; establishing and delineating Public Service Commission jurisdiction over make-ready pole access within the state; determining the feasibility of electric utilities constructing and operating middle-mile broadband Internet projects to serve certain unserved and underserved areas; defining certain terms; delineating the factors that must be contained in certain feasibility studies; requiring the Broadband Enhancement Council and the Public Service Commission to assist electric utilities in the determination of the feasibility of certain proposed middle-mile broadband development projects; requiring that the Broadband Enhancement Council render a judgment as to the feasibility of middle-mile broadband Internet projects within a certain period of time; requiring
certain reports be submitted to certain officials and committees; providing for severability; establishing the West Virginia Small Wireless Facilities Deployment Act; making legislative findings; defining terms; providing for access to public rights-of-way for the collocation of small wireless facilities; providing for certain permit requirements; authorizing and limiting access to collocation sites, structures, and equipment; requiring permits to be issued on a nondiscriminatory basis; providing for the collection of fees and setting the amount of fees; and providing for certain zoning, indemnification, insurance, and bonding requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 6L. SPECIAL METHOD FOR VALUATION OF CERTAIN WIRELESS TECHNOLOGY PROPERTY.

§11-6L-1. Short title.

This article shall be known and cited as the Wireless Technology Business Property Valuation Act.

§11-6L-2. Definitions.

For the purposes of this article:

(1) “Tower” means a structure which hosts an antenna or other equipment used for the purposes of transmitting cellular or wireless signals for communications purposes, including telephonically, or for computing purposes, including any antenna and all associated equipment, and which is constructed or erected between July 1, 2019, and July 1, 2024; and

(2) “Salvage value” means five percent of original cost.

§11-6L-3. Limited-time valuation of certain specialized wireless technology property.
Notwithstanding any other provision of this code to the contrary, for five years immediately following the date of its erection, the value of a tower is its salvage value, and the correlated value determined under a unit valuation approach shall be reduced by the difference between the original cost and the salvage value of a tower.

§11-6L-4. Initial determination; protest and appeal.

The valuation and assessment of any tower subject to this article, including the process of protest and appeal from any such valuation, shall be conducted the manner set forth and more fully described in §11-6-1 et seq. of this code and any applicable legislative rules.

§11-6L-5. Effective date.

This article is effective on and after July 1, 2019.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

(a) The Public Service Commission shall possess and exercise regulatory jurisdiction over the provisions of this article. The commission shall administer and adjudicate disputes relating to the issues and procedures provided for under this article.

(b) The commission shall adopt the rates, terms, and conditions of access to and use of poles, ducts, conduits, and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 – 1.1415, inclusive, of the dispute resolution process incorporated by reference in those regulations and any subsequent modifications or additions to the provisions of the United States Code or Code of Federal Regulations provisions referenced herein.
(c) The commission shall certify to the Federal Communications Commission that this state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the regulation of pole attachments. The certification shall include notice that the State of West Virginia hereby:

(1) Regulates the rates, terms, and conditions related to pole attachments; and

(2) In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services.

§31G-4-5. Electric power utilities; feasibility study for providing broadband services; Public Service Commission to assist; proposed legislation to be developed; report.

(a) For purposes of this section:

(1) “Commission” shall mean the West Virginia Public Service Commission.

(2) “Council” shall mean the Broadband Enhancement Council, as defined in §31G-1-1 of this code.

(3) “Electric utility” shall mean any electric utility operating within this state that is regulated by the commission.

(4) “Project” shall mean a middle-mile broadband infrastructure expansion project proposed by an electric utility.

(b) Each electric utility may investigate the feasibility of constructing and operating a project within the electric utility distribution system and, if it so elects, may submit a feasibility study of a proposed project to the council on or before December 1, 2019. Additional feasibility studies may
be submitted to the council after December 1, 2019, without penalty.

c) The council and the commission shall assist each such electric utility in its preparation of such a feasibility study.

d) The feasibility study shall include an evaluation of the following:

(1) The scope of the proposed project for which the feasibility study is conducted, which shall include, but not be limited to:

(A) The route of the middle-mile infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle mile, the location of the electric utility’s distribution infrastructure that will be utilized in connection with the proposed project, the capacity of the middle-mile broadband infrastructure that will be available to lease to last-mile broadband Internet providers upon completion of the proposed project;

(B) The estimated cost of the proposed project, including but not limited to engineering costs, construction costs, permitting costs, materials and labor, right-of-way costs, and a reasonable rate of return to the electric utility;

(C) The proposed schedule of construction of the proposed project; and

(D) The method of attachment and connection of the middle-mile broadband fiber assets to the electric utility’s distribution infrastructure;

(2) The regulatory and legal barriers to an electric utility constructing a project and operating middle-mile broadband infrastructure to provide access to unserved areas of the state, as defined in §31G-1-2 of this code, and any
underserved areas of the state, and proposed legislation to
address such regulatory barriers;

(3) Whether it is in the public interest and the interest of
the electric utility to make improvements to the distribution
grid in furtherance of providing such middle-mile
broadband Internet services in conjunction with its program
of electric distribution projects;

(4) Whether it is in the public interest and the interest of
the electric utility to operate middle-mile broadband
Internet assets to provide access to unserved and
underserved areas of the state;

(5) Whether it is in the public interest and the interest of
the electric utility to permit a third party to lease such
capacity to provide last-mile broadband Internet services to
unserved and underserved areas of the state;

(6) Whether construction of middle-mile broadband
Internet infrastructure utilizing electric utility distribution
systems is feasible with respect to the maturity of the
relevant technology, the compatibility of such services with
existing electric services, and the financial requirements to
undertake such project;

(7) The anticipated level of rate adjustment necessary to
allow the electric utility to recover its costs associated with
the proposed project, and a reasonable rate of return, on an
expedited basis, that will be recovered by the electric utility
through a rate adjustment at the commission; and

(8) Such other information that is pertinent to the
project.

(e) Upon receipt of a feasibility study, the council shall
post the same on the council website for written public
comment for a period of seven days and then shall render a
determination, by a majority vote of the council, as to the
feasibility of the proposed project.
(f) In its consideration of the feasibility of a project, the council shall identify one or more last-mile broadband Internet providers that may lease the middle-mile broadband Internet capacity created by the proposed project pursuant to lease terms and conditions set by the council.

(g) The council shall render such feasibility determination within 60 days from the date the feasibility study is submitted to the council.

(h) Commencing January 1, 2020, and each year thereafter, the council shall give a report of its consideration of feasibility studies submitted pursuant to this section to the Governor, the President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and Finance.

§31G-4-6. Severability.

Pursuant to §2-2-10 of this code, if any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 31H. SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

ARTICLE 1. WEST VIRGINIA SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

§31H-1-1. Legislative findings.

(a) The deployment of reliable small wireless facilities and other next generation wireless and broadband network technology is a matter of statewide concern and critical to the continued economic development and diversification in the State of West Virginia.

(b) Small wireless facilities are critical to delivering wireless access to advanced technology, broadband, and
911 services to homes, businesses, and schools throughout the State of West Virginia.

(c) Because of the integral role that the delivery of broadband and wireless technology plays in the economic vitality of the State of West Virginia and in the lives of its citizens, the Legislature has determined that a law addressing the further deployment of wireless technology is of vital interest to the state.

(d) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, may often be deployed most effectively in public rights-of-way.

(e) To meet the key objectives of this chapter, wireless providers must have access to certain public rights-of-way and the ability to attach or collocate on existing infrastructure that will permit these providers to offer next generation wireless and broadband technology.

(f) To ensure that public and private West Virginia consumers may benefit from these services as soon as possible and to ensure that providers of wireless access have a fair and predictable process for the deployment of small wireless facilities in a manner consistent with the character of the area in which the small wireless facilities are deployed, the Legislature is enacting this chapter, which specifies the regulatory authority for the collocation of small wireless facilities.


As used in this chapter, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;
“Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code;

“Applicant” means any person who submits an application and is a wireless provider;

“Application” means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities or to approve the installation, modification, or replacement of a utility pole or wireless support structure;

“Authority” means the State of West Virginia or a political subdivision that has jurisdiction and control for use of public rights-of-way as provided by this code for placements within public rights-of-way or has zoning or land use control for placements not within public rights-of-way;

“Authority utility pole” means a utility pole owned or operated by an authority in a public right-of-way;

“Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole;

“Commissioner” means the Commissioner of the West Virginia Division of Highways;

“Communications facilities” means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service;

“Communications service” means cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C.
153(53), as amended; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service;

(11) “Communications service provider” means any entity that provides communications service;

(12) “Decorative pole” means an authority utility pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, or specially designed informational, or directional signage, or temporary holiday or special event attachments have been placed, or are permitted to be placed, according to nondiscriminatory municipal rules or codes;

(13) “Division” means the West Virginia Division of Highways;

(14) “FCC” means the Federal Communications Commission of the United States;

(15) “Fee” means a one-time, nonrecurring charge;

(16) “Historic district” means a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C;

(17) “Law” means a federal or state statute, common law, code, rule, regulation, order, or a local ordinance or resolution;

(18) “Micro wireless facility” means a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that
has an exterior antenna, if any, that is no longer than 11 inches;

(19) “Permit” means a written authorization required by an authority to perform an action or initiate, continue, or complete a project;

(20) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

(21) “Rate” means a recurring charge;

(22) “Right-of-way” means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway;

(23) “Small wireless facility” means a wireless facility that meets both of the following qualifications:

(A) Each antenna could fit within an imaginary enclosure of no more than 6 cubic feet; and

(B) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: Electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services;

(24) “Utility pole” means a pole or similar structure that is or may be used, in whole or in part, by a communication services provider or for electric distribution, lighting, traffic control, signage (if the pole is 15 feet or taller), or a similar function, or for the collocation of small wireless facilities. However, “utility pole” does not include wireless support structures or electric transmission structures;
(25) “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(A) Equipment associated with wireless communications; and

(B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. “Wireless facility” includes small wireless facilities. “Wireless facility” does not include:

(i) The structure or improvements on, under, or within which the equipment is collocated; or

(ii) Wireline backhaul facilities, coaxial or fiber-optic cable that is between wireless support structures or utility poles, or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna;

(26) “Wireless infrastructure provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is not a wireless provider;

(27) “Wireless provider” means a wireless infrastructure provider or a wireless provider;

(28) “Wireless services” means any services, using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile location, provided to the public using wireless facilities;

(29) “Wireless service provider” means a person who provides wireless services;
(30) “Wireless support structure” means a structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. “Wireless support structure” does not include a utility pole; and

(31) “Wireline backhaul facility” is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

ARTICLE 2. ACCESS TO PUBLIC RIGHTS-OF-WAY.

§31H-2-1. Use of rights-of-way for small wireless facilities and utility poles; other structures.

(a) The provisions of this section shall only apply to activities of a wireless provider within the right-of-way.

(b) Except as provided in this chapter, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities or the installation of utility poles and associated small wireless facilities.

(c) An authority may not enter into an exclusive arrangement with any person for use of the right-of-way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of utility poles.

(d) An authority may only charge a wireless provider a rate or fee for the use of the right-of-way with respect to the collocation of small wireless facilities or the installation, maintenance, modification, operation, or replacement of a utility pole in the right-of-way if the authority charges other entities for similar use of the right-of-way. Notwithstanding any provision of this article to the contrary, an authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate to a wireless provider for the use of the right-of-way. The rate for occupancy and use of the right-
of-way may not initially exceed $25 per year per small wireless facility. An authority may adjust this rate up to 10 percent every five years.

(e) Subject to the provisions of this section, a wireless provider has the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, and replace its own utility poles or, with the permission of the owner, a third party’s utility pole, along, across, upon, and under the right-of-way. Such structures and facilities shall be so installed and maintained as not to obstruct or hinder the usual travel or public safety on such right-of-way or to obstruct the legal use of such right-of-way by utilities or authorities.

(f) Each new or modified utility pole installed by a wireless provider in the right-of-way may not exceed the greater of:

1. Ten feet in height above the tallest existing utility pole in place as of the effective date of this chapter located within 500 feet of the new pole in the same right-of-way; or
2. Fifty feet above ground level. New small wireless facilities in the right-of-way may not extend:

   A. More than 10 feet above an existing utility pole in place as of the effective date of this chapter; or
   B. For small wireless facilities on a new utility pole, above the height permitted for a new utility pole pursuant to the provisions of this section. Subject to the provisions of this article, a wireless provider has the right to collocate a small wireless facility and install, maintain, modify, operate, and replace its own utility pole or, with the permission of the owner, a third party’s utility pole that exceeds these height limits along, across, upon, and under the right-of-way, subject to applicable zoning regulations.

(g) An authority may adopt reasonable written design guidelines with objective, technically feasible criteria that
reasonably match the aesthetics and character of an immediate area regarding all of the following:

1. The location of any ground-mounted small wireless facilities;
2. The location of a small wireless facility on a utility pole or wireless support structure;
3. The appearance and concealment of small wireless facilities, including those relating to materials used for arranging, screening, or landscaping; and
4. The design and appearance of a utility pole or wireless support structure.

Any such guidelines shall be applied in a nondiscriminatory manner. Materials utilized to comply with the appearance and concealment criteria established in the guidelines shall not be considered part of the small wireless facility for purposes of facility size restrictions in this chapter. Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with an authority’s current design guidelines.

h) A wireless provider is permitted to replace decorative poles when necessary to collocate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative poles being replaced.

i) A wireless provider shall comply with written, objective, reasonable, and nondiscriminatory requirements that prohibit the installation of structures in the right-of-way in an area designated solely for underground communications and electric lines where:
1. The authority has required all such lines to be placed underground by a date certain that is three months prior to the submission of the application;
(2) Those utility poles which the authority allows to remain shall be made available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, in compliance with this act; and

(3) A wireless provider may install a new utility pole in the designated area that otherwise complies with the other subsections of this section when it is not able to provide wireless service by collocating on a remaining structure. For small wireless facilities installed before an authority adopts requirements that communications and electric lines be placed underground, an authority adopting such requirements shall:

(A) Permit a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the utility pole owner; or

(B) Permit the wireless provider to replace the associated utility pole within 50 feet of the prior location, subject to the permission of the utility pole owner.

(j) Subject to the provisions of this section, an authority may require reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district. Any such design or concealment measures may not have the effect of prohibiting any provider’s technology; nor may any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

(k) Any requirements an authority adopts under subsections (g) through (j), inclusive, of this section must be:

(1) Reasonable, in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments;
(2) No more burdensome than those applied to other types of infrastructure deployments; and

(3) Objective and published in advance. The authority, in the exercise of its administration and regulation related to the management of the right-of-way, must be competitively neutral with regard to other wireless service providers who are users of the right-of-way, including that terms may not be unreasonable or discriminatory and may not violate any applicable law or effectively prohibit the provision of wireless services.

(l) The authority may require a wireless provider to repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and to return the right-of-way to its functional equivalence before the damage, as determined by the authority, pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may complete those repairs and charge the applicable party the reasonable, documented cost of such repairs. Regardless of whether the authority or the wireless provider ultimately makes the repairs, the authority may assess an additional fine of $100 per day that the wireless provider failed to make the required repairs after the wireless provider received written notice until the repairs were completed.

(m) Nothing in this chapter shall be deemed to impose or otherwise affect any rights, controls, tariffs, or contractual obligations that may be established with regard to the utility poles, similar structures, or equipment of any type that are owned or controlled by an investor-owned electric utility whose rates are regulated by the Public Service Commission of West Virginia or any such utility’s affiliates, or by an independent transmission company.

(a) The provisions of this section shall apply to the permitting of small wireless facilities by a wireless provider in or outside the right-of-way as specified in subsection (b) of this section and to the permitting of the installation, modification, and replacement of utility poles by a wireless provider inside the right-of-way.

(b) Small wireless facilities that meet the requirements of §31H-2-1(f) through §31H-2-1(j) of this code shall be classified as permitted uses and not subject to zoning review or approval if they are collocated:

(1) In the right-of-way in any zone; or

(2) Outside the right-of-way in property not zoned exclusively for single-family residential use.

(c) An authority may require an applicant to obtain one or more permits to collocate a small wireless facility that meets the requirements of §31H-2-1(f) through §31H-2-1(j) of this code or to install, modify, or replace a utility pole and associated small wireless facilities that meet the requirements of §31H-2-1(f) through §31H-2-1(j) of this code, provided that the permits are of general applicability. An authority shall receive applications for, process, and issue permits subject to the following requirements:

(1) An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority on the wireless provider’s utility pole;

(2) An applicant may not be required to provide more information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant may be required to include construction and
engineering drawings and information demonstrating compliance with the criteria set forth in this subsection;

(3) An authority, other than the Division of Highways, may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole nor the underground placement of small wireless facilities;

(4) An authority, other than the Division of Highways, may not limit the placement of small wireless facilities by minimum separation distances;

(5) An authority may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless provider within one year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power or communications transport facilities to the site;

(6) Within 10 days of receiving an application, an authority must determine and notify the applicant in writing whether the application is complete. If an application is incomplete, an authority must specifically identify the missing information in writing. The processing deadlines in this subsection are tolled from the time the authority sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the authority;

(7) An application shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within 60 days of receipt of the application for a collocation of a small wireless facility and 90 days for an application for the installation, modification, or replacement of a utility pole in the right-of-way;
(8) An authority may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements of this section only if the proposed application:

(A) Materially interferes with the safe operation of traffic control equipment;

(B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(C) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(D) Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by legislative rule or ordinance that concern the location of ground-mounted equipment and new utility poles. Such spacing requirements may not prevent a wireless provider from serving any location;

(E) Fails to comply with applicable codes, legislative rule, and generally applicable standards that are consistent with this chapter and adopted by an authority for construction and public safety in the rights-of-way, including reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, and abandonment and removal provisions;

(F) Fails to comply with applicable design guidelines adopted under §31H-2-1(g) of this code; or

(G) Fails to attest that a small wireless facility will comply with relevant Federal Communications Commission (FCC) regulations concerning:

(1) Radiofrequency emissions from radio transmitters; and
(2) Unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. 22.970 through 47 C.F.R. 22.973 and 47 C.F.R. 90.672 through 47 C.F.R. 90.675;

(9) The authority must document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the changes made in the resubmission;

(10) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority shall be allowed at the applicant’s discretion to file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities; the denial of one or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch;

(11) Installation or collocation for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the authority and the applicant agree to extend this period or a delay is caused by the lack of commercial power or communications facilities at the site. Approval of an application authorizes the applicant to:

(A) Undertake the installation or collocation; and

(B) Subject to applicable relocation requirements and the applicant’s right to terminate at any time, operate and maintain the small wireless facilities and any associated
utility pole installed by the wireless provider or authority
utility that is covered by the permit for a period of not less
than 10 years, which must be renewed for equivalent
durations so long as the small wireless facilities and utility
pole are in compliance with the criteria set forth in this
subsection;

(12) An authority may not institute, either expressly or
de facto, a moratorium on filing, receiving, or processing
applications or issuing permits or other approvals, if any, for
the collocation of small wireless facilities or the installation,
modification, or replacement of utility poles to support
small wireless facilities.

(d) An authority may require a permit to work within a
right-of-way for any activities under this chapter, if
applicable, and may prohibit access when a road is closed
or its access is limited to the public: Provided, That except
for this permit, and the other actions explicitly authorized
by this chapter, an authority may not require an additional
application, approval, or permit, or require any fees or other
charges from a communications service provider authorized
to occupy the right-of-way, for:

(1) Routine maintenance;

(2) The replacement of wireless facilities with wireless
facilities that are substantially similar, the same size, or
smaller; or

(3) The installation, placement, maintenance, operation,
or replacement of micro wireless facilities that are
suspended on existing cables that are strung between
existing utility poles in compliance with applicable safety
codes and the pole owner’s construction standards and
engineering practices.

(e) An authority may revoke a permit at any time if the
conditions of the permit required pursuant to this article are
no longer being satisfied.
§31H-2-3. Access to authority utility poles; application and permit fees and rates for small wireless facilities.

(a) An authority shall allow the collocation of small wireless facilities on authority utility poles within the right-of-way subject to the provisions of this chapter and the following:

(1) An authority may not enter into an exclusive arrangement with any person for the right to attach small wireless facilities to authority utility poles;

(2) The rates and fees for collocations on authority utility poles shall be nondiscriminatory regardless of the services provided by the collocating person;

(3) An authority may charge an annual recurring rate to collocate small wireless facilities on an authority utility pole that equals $65 per year per pole. An authority may adjust this rate 10 percent every five years, rounded to the nearest five dollars. Nothing in this subdivision prohibits a wireless provider and an authority from mutually agreeing to an annual recurring rate of less than $65 to collocate a small wireless facility on an authority utility pole;

(4) The rates, fees, and terms for make-ready work must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this section;

(5) An authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority utility pole only if it demonstrates that the collocation would make the authority utility pole structurally unsound; and
(6) The person owning, managing, or controlling the authority utility pole may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work including any pole replacement may not exceed the actual costs or the amount charged to other communications service providers for similar work and may not include any consultant fee or expense.

(b) For the purposes of a state-owned right-of-way maintained by the Division of Highways, the commissioner 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 article.

(c) Application fees are subject to the following requirements:

(1) An authority may not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by this chapter;

(2) An authority may charge an application fee for collocation of small wireless facilities on an existing utility pole not to exceed $200 each for the first five small wireless facilities in the same application and $100 for each additional small wireless facility in the same application. An authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars;

(3) An authority may charge an application fee for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that are permitted uses in accordance with the specifications in this chapter not to exceed $250. An authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars; and
(4) An authority may charge an application fee for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use in accordance with the specifications in this chapter not to exceed $1,000. An authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars.

§31H-2-4. Local authority; miscellaneous provisions.

(a) Nothing in this chapter may be construed to relieve any person from any requirement:

(1) To obtain a franchise or a state-issued authorization to offer cable television service; or

(2) To obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this chapter. The permitting procedures and authorizations set forth in this chapter apply only to the placement of small wireless facilities and associated utility poles, and do not authorize the installation or operation of a wireline backhaul facility.

(b) Except as provided in this chapter or otherwise specifically authorized by state or federal law, an authority shall not adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a right-of-way by a communications service provider authorized by state or local law to operate in a right-of-way.

(c) Except as authorized by federal law, this chapter, and municipal taxation ordinances authorizing collection of business and occupation taxes since at least November 1, 1998, an authority shall not regulate any communications services or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider’s communications facilities in a right-of-way, to the extent the communications service provider is already paying the authority a fee for access to the right-of-way.
(d) Subject to the provisions of this chapter and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with respect to wireless support structures and utility poles; no authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the authority, other than to comply with applicable codes; and an authority shall evaluate the structure classification for wireless support structures under the latest version of ANSI/TIA-222. Nothing in this chapter authorizes the state or any political subdivision, including an authority, to require wireless facility deployment or to regulate wireless services.

(e) An authority may adopt an ordinance that makes available to wireless providers rates, fees, and other terms that comply with the provisions of this chapter. Subject to the provisions of this section, in the absence of an ordinance that fully complies with this chapter and until such a compliant ordinance is adopted, if at all, wireless providers may install and operate small wireless facilities and utility poles under the requirements of this chapter. An authority and a wireless provider may enter into a voluntary and nondiscriminatory agreement implementing the provisions of this chapter, but an authority may not require a wireless provider to enter into such an agreement.

(f) An agreement or ordinance that does not fully comply with this chapter may apply only to small wireless facilities and associated utility poles that became operational or were installed before the effective date of this chapter. Such an agreement or ordinance may not be renewed, or extended, unless it is modified to fully comply with this chapter. An agreement or ordinance that applies to small wireless facilities and associated utility poles that became operational or were constructed before the effective
date of this chapter is invalid and unenforceable beginning
on the 181st day after the effective date of this chapter
unless it fully complies with this chapter. If an agreement or
ordinance is invalid in accordance with this subsection, in
the absence of an agreement or ordinance that fully
complies with this chapter and until such a compliant
agreement or ordinance is entered or adopted, small wireless
facilities and associated utility poles that become
operational or were constructed before the effective date of
this chapter may remain installed and be operated under the
requirements of this chapter.

(g) An agreement or ordinance that applies to small
wireless facilities and utility poles that become operational
on or after the effective date of this chapter is invalid and
unenforceable beginning on the effective date of this
chapter unless it fully complies with this chapter. If an
agreement or ordinance is invalid in accordance with this
subsection, in the absence of an agreement or ordinance that
fully complies with this chapter and until such a compliant
agreement or ordinance is entered or adopted, small wireless
facilities and utility poles may be installed and operated in
the right-of-way or become operational under the
requirements of this chapter.

(h) Any wireless provider who owns or operates small
wireless facilities or utility poles in the right-of-way shall
indemnify, protect, defend, and hold the authority and its
elected officials, officers, employees, agents, and volunteers
harmless against any and all claims, lawsuits, judgments,
costs, liens, losses, expenses, fees to include reasonable
attorney fees and costs of defense, proceedings, actions,
demands, causes of action, liability and suits of any kind and
nature, including personal or bodily injury or death,
property damage or other harm for which recovery of
damages is sought, to the extent that it is caused by the
negligence of the wireless provider who owns or operates
small wireless facilities or utility poles in the right-of-way,
any agent, officer, director, representative, employee,
affiliate, or subcontractor of the wireless provider, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in rights-of-way.

(i) Except for a wireless provider with an existing franchise to occupy and operate in the rights-of-way, during the period in which the wireless provider’s facilities are located on the authority improvements or rights-of-way, the authority may require the wireless provider to carry, at the wireless provider’s own cost and expense, the following insurance:

(1) Property insurance for its property’s replacement cost against all risks;

(2) Workers’ compensation insurance, as required by law; or

(3) Commercial general liability insurance with respect to its activities on the authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority improvements or rights-of-way, including coverage for bodily injury and property damage. An authority may require a wireless provider to include the authority as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the authority in a commercial general liability policy as reasonably required by the authority.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirements required by an authority. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this section. A wireless provider that elects to self-insure shall provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limits required by the authority.
(j) An authority may impose reasonable and nondiscriminatory requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or authority property caused by the wireless provider or its agent.

(k) On or before December 31, 2026, all Class I and Class II municipalities shall report to the Joint Committee on Government and Finance of the effects of the implementation of this article.

CHAPTER 43

(H. B. 3093 - By Delegates Cowles, Porterfield and Rohrbach)

[Passed March 1, 2019; in effect ninety days from passage.] [Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §8A-11-1 of the Code of West Virginia, 1931, as amended, relating to standards for factory-built homes; providing for building code requirements for manufactured housing to be the same as for requirements for other single-family homes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. SPECIAL PROVISIONS.


(a) Notwithstanding any existing provisions of law, municipal or county ordinance or state building code, the standards for factory-built homes, housing prototypes, subsystems, materials and components certified as acceptable by the federal Department of Housing and Urban
Development are considered acceptable and are approved for use in housing construction in this state.

(b) Appropriate building code compliance documentation attached to a factory-built home shall constitute prima facie evidence that the products or materials contained therein are acceptable.

(c) A governing body of a municipality or a county, when enacting any ordinance or regulation for the purposes of regulating the subdivision, development and use of land, shall uniformly apply such design standards and associated review and permitting procedures for factory-built and other single-family constructed homes.

(d) Factory-built homes, like other types of homes, shall be constructed and installed in conformity with the requirements of 44 C.F.R. §60.3(1976) and any applicable statute or rule relating to building in a flood zone.

CHAPTER 44


[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-27; to amend and reenact §49-1-206 of said code; to amend and reenact §49-2-107, §49-2-113, and §49-2-708 of said code; to amend said code by adding thereto two new sections, designated §49-2-111a and §49-2-111b; and to amend and reenact §49-4-108, §49-4-406, §49-4-413, §49-4-604, §49-4-608, §49-4-711,
§49-4-714 and §49-4-724 of said code, all relating to foster care; defining terms; transitioning the foster care population to a managed care organization; allowing the secretary to apply for waivers; setting out requirements for the managed care program; providing for an effective date; providing a sunset date; require the department to enter into certain types of contracts with child placing agencies; creating a state foster care ombudsman; setting out experience requirements for an ombudsman; providing duties and authority of the ombudsman; setting out preclusions for employment of certain department employees; providing for managed care employees allocation to foster care in West Virginia; providing for performance based contracting with child placement agencies; setting out procurement and contract requirements; requiring a study of kinship care; requiring the department to review certain legislative rules; extending the time to file legislative rules; extending the time a foster care certification is authorized; requiring home safety assessment to take place annually; prohibiting the removal of a child from a residential child care program in certain circumstances; providing exceptions to permit the removal of a child from a residential child care program; establishing payment rates for services; permitting those rates be exceeded when certain conditions are met; prohibiting the termination of parental rights solely based upon participation in a medically assisted treatment program; prohibiting the placement of a foster child in an out of state facility; providing exceptions to the placement of a foster child in an out of state facility; setting out standard assessments of certain juveniles; and requiring reporting.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-27. Transitioning foster care into managed care.
(a) “Eligible services” means acute care, including medical, pharmacy, dental, and behavioral health services.

(b) The secretary shall transition to a capitated Medicaid program for a child classified as a foster child and a child placed in foster care under Title IV-E of the Social Security Act who is living in the state by January 1, 2020. The program shall be statewide, fully integrated, and risk based; shall integrate Medicaid-reimbursed eligible services; and shall align incentives to ensure the appropriate care is delivered in the most appropriate place and time.

(c) The secretary shall make payments for the eligible services, including home and community-based services, using a managed care model.

(d) The secretary shall submit, if necessary, applications to the United States Department of Health and Human Services for waivers of federal Medicaid requirements that would otherwise be violated in the implementation of the program, and shall consolidate any additional waivers where appropriate: Provided, That this subsection does not apply to the Aged and Disabled Waiver, the Intellectual/Developmental Disabilities Waiver, and the Traumatic Brain Injury Waiver.

(e) If a selected managed care organization ceases to contract with the Department of Health and Human Services to provide Medicaid managed care services, it must provide all patient records, including medical records, to the next selected managed care organization to ensure the Eligible Medicaid Beneficiaries do not experience an interruption in care.

(f) In designing the program, the secretary shall ensure that the program:

(1) Reduces fragmentation and offers a seamless approach to meeting participants’ needs;
(2) Delivers needed supports and services in the most integrated, appropriate, and cost-effective way possible;

(3) Offers a continuum of acute care services, which includes an array of home and community-based options;

(4) Includes a comprehensive quality approach across the entire continuum of care services; and

(5) Consult stakeholders in the program development process, and the managed care organization that is awarded the contract shall create a voluntary advisory group of foster, adoptive, and kinship parents, which shall meet every quarter for the first year following the effective date of the changes made to this section during the 2019 Regular Session of the Legislature and then every six months thereafter, to discuss issues they are encountering with the managed care organization and recommend solutions. The managed care organization shall report on the recommendations of the advisory group and address how and why procedures have or have not changed based on those recommendations. This report shall be submitted to the secretary and the Legislative Oversight Commission on Health and Human Resources Accountability as set forth in §16-29E-1 et seq. of this code, and the public in a timely fashion and shall be available on the managed care organization’s webpage.

(g) The department shall evaluate the transition to managed care and shall collect and annually report on the following items: the number of claims submitted, the number of claims approved, the number of claims denied, the number of claims appealed, the resolution of appealed claims, the average time of an appeal, the average length of stay in a child residential care center, and health outcomes. The initial report will be filed by July 1, 2021, with the Legislative Oversight Commission on Health and Human Resources Accountability and the Foster Care Ombudsman with a final report submitted July 1, 2023.
(h) The transition of foster care to managed care shall terminate on June 30, 2024, unless cancelled by the secretary at an earlier date.

(i) (1) The Office of the Inspector General shall employ an independent foster care ombudsman, with experience as a former foster parent or experience in the area of child welfare;

(2) The duties of the ombudsman shall include, but are not limited to, the following:

(A) Advocating for the rights of foster children and foster parents;

(B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a foster child or foster parent, relating to action, inaction or decisions of providers of managed care services, or the representatives of such providers, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare and rights of the foster child or foster parent;

(C) Monitoring the development and implementation of federal, state and local legislation, regulations and policies with respect to foster care services; and

(D) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints for the purpose of identifying and resolving significant problems faced by foster children and foster parents as a class. The data shall be submitted to the Bureau of Children and Families within the Department of Health and Human Resources and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis;

(3) The ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities.
(j) An employee of the department who, as a function of that employment, has engaged in the development of any contract developed pursuant to the requirements of this section may not for a period of two years thereafter be employed by any agency or company that has benefitted or stands to benefit directly from a contract between the department and that agency or company.

(k) Any managed care company selected as the managed care contractor pursuant to the provisions of this article shall have at least 80 percent of the total full-time equivalent positions allocated to manage care of foster children in West Virginia according to the contract must have a primary work place in the State of West Virginia.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and treatment programs.

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

“Child Advocacy Center (CAC)” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., as set forth in §49-3-101 of this code.

“Child care” means responsibilities assumed and services performed in relation to a child’s physical, emotional, psychological, social, and personal needs and the consideration of the child’s rights and entitlements, but does not include secure detention or incarceration under the
jurisdiction of the Division of Corrections and Rehabilitation pursuant to §49-2-901 et seq. of this code. It includes the provision of child care services or residential services.

“Child care center” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

“Child care services” means direct care and protection of children during a portion of a 24-hour day outside of the child’s own home which provides experiences to children that foster their healthy development and education.

“Child placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are 16 or 17 years old and living in unlicensed residences.

“Child welfare agency” means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Corrections and Rehabilitation, pursuant to §49-2-901 et seq. of this code,
nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

“Community based” means a facility, program, or service located near the child’s home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

“Community-based juvenile probation sanctions” means any of a continuum of nonresidential accountability measures, programs, and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

(A) Electronic monitoring;
(B) Drug and alcohol screening, testing, or monitoring;
(C) Youth reporting centers;
(D) Reporting and supervision requirements;
(E) Community service; and
(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

“Community services” means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

“Evidence-based practices” means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

“Facility” means a place or residence, including personnel, structures, grounds, and equipment used for the
care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody.

“Family child care facility” means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age. A facility may be in a provider’s residence or a separate building.

“Family child care home” means a facility which is used to provide nonresidential child care services for compensation in a provider’s residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

“Family resource network” means:

(A) A local community organization charged with service coordination, needs and resource assessment, planning, community mobilization, and evaluation, and which has met the following criteria:

(i) Agreeing to a single governing entity;

(ii) Agreeing to engage in activities to improve service systems for children and families within the community;

(iii) Addressing a geographic area of a county or two or more contiguous counties;

(iv) Having nonproviders, which include family representatives and other members who are not employees of publicly funded agencies, as the majority of the members
of the governing body, and having family representatives as the majority of the nonproviders;

(v) Having representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district, on the governing body; and

(vi) Accepting principles consistent with the cabinet’s mission as part of its philosophy.

(B) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

“Family support”, for the purposes of §49-2-601 et seq. of this code, means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

“Family support program” means a coordinated system of family support services administered by the Department of Health and Human Resources through contracts with behavioral health agencies throughout the state.

“Foster family home” means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult member of the household.

“Health care and treatment” means:

(A) Developmental screening;

(B) Mental health screening;

(C) Mental health treatment;

(D) Ordinary and necessary medical and dental examination and treatment;
(E) Preventive care including ordinary immunizations, tuberculin testing, and well-child care; and

(F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion.

“Home-based family preservation services” means services dispensed by the Department of Health and Human Resources or by another person, association, or group who has contracted with that division to dispense services when those services are intended to stabilize and maintain the natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

(A) Intensive, short-term intervention of four to six weeks; and

(B) Home-based, longer-term after care following intensive intervention.

“Informal family child care” means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household who are under six years of age. Care is given in the provider’s own home to at least one child who is not related to the caregiver.

“Needs assessment” means an evidence-informed assessment which identifies the needs a child or family has, which, if left unaddressed, will likely increase the chance of reoccurring.

“Nonsecure facility” means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.
“Nonviolent misdemeanor offense” means a misdemeanor offense that does not include any of the following:

(A) An act resulting in bodily injury or death;

(B) The use of a weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or

(E) Any offense for driving under the influence of alcohol or drugs.

“Out-of-home placement” means a post-adjudication placement in a foster family home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, detention facility, or other residential placement other than placement in the home of a parent, custodian, or guardian.

“Out-of-school time” means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

“Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home, or other facility or residence.

“Pre-adjudicatory community supervision” means supervision provided to a youth prior to adjudication, for a period of supervision up to one year for an alleged status or delinquency offense.
“Regional family support council” means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 et seq. of this code.

“Relative family child care” means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given in the provider’s home.

“Residential services” means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians, or other persons or entities on a continuing or temporary basis. It may include care or treatment, or both, for transitioning adults. Residential services does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of Corrections and Rehabilitation, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

“Risk and needs assessment” means a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

“Secure facility” means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

“Staff secure facility” means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility, and which limits its residents’ access to the surrounding community, but is not
characterized by construction fixtures designed to physically restrict the movements and activities of residents.

“Standardized screener” means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

“State family support council” means the council established by the Department of Health and Human Resources pursuant to §49-2-601 et seq. of this code to carry out the responsibilities specified in §49-2-101 et seq. of this code.

“Time-limited reunification services” means individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care, and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during 15 of the most recent 22 months a child or juvenile has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

“Technical violation” means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

“Truancy diversion specialist” means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.
ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.

(a) The department shall establish minimum standards for foster-home care to which all certified foster homes must conform by legislative rule. Any home that conforms to the standards of care set by the department shall receive a certificate of operation.

(b) The certificate of operation shall be in force for three years from the date of issuance and may be renewed unless revoked because of willful violation of this chapter.

(c) The certificate shall show the name of the person or persons authorized to conduct the home, its exact location and the number of children that may be received and cared for at one time and other information as set forth in legislative rule. No certified foster home shall provide care for more children than are specified in the certificate.

(d) No unsupervised foster home shall be certified until an investigation of the home and its standards of care has been made by the department or by a licensed child welfare agency serving as a representative of the department.

§49-2-111a. Performance based contracting for child placing agencies.

(a) For purposes of this section:

(1) “Child” means:

(A) A person less than 18 years of age; or

(B) A person age 18 to 21 years who is eligible to receive the extended foster care services.

(2) “Child-placing agency” means an agency licensed by the department to place a child in a foster care home.

(3) “Department” means the Department of Health and Human Resources.
(4) “Evidence-based” means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended population.

(5) “Performance-based contracting” means structuring all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(6) “Promising practice” means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(7) “Research-based” means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(b) No later than December 1, 2020, the department shall enter into performance-based contracts with child placing agencies.

(c) In conducting the procurement, the department shall actively consult with other state agencies and other entities with expertise in performance-based contracting with child placing agencies.

(d) The procurement process shall be developed and implemented in a manner that complies with applicable provisions of this code.

(e) The procurement and resulting contracts shall include, but are not limited to, the following:

(1) Adequate capacity to meet the anticipated service needs in the contracted service area of the child placing agency;
(2) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(3) Child placing agency data reporting, including data on performance and service outcomes; including but not limited to:

(A) Safety outcomes;

(B) Permanency outcomes;

(C) Well-being outcomes;

(D) Incentives earned; and

(E) Recruitment and retention of foster parents; and

(4) A hold harmless period to determine a baseline for evaluation.

(f) As part of the procurement process under this section, the department shall issue the request for proposals no later than July 1, 2020. The department shall notify the apparently successful bidders no later than September 1, 2020.

(g) Performance-based payment methodologies must be used in child placing agency contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the first year of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to the child placing agency only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the child placing agency will receive a defined share of any savings that result from improved
performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the child placing agency shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

(h) The department shall actively monitor the child placing agency’s compliance with the terms of contracts executed under this section.

(i) The use of performance-based contracts under this section shall be done in a manner that does not adversely affect the state’s ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

(j) The department shall report the performance of the child placing agency to the Legislative Oversight Commission on Health and Human Resources Accountability by December 31, annually.

§49-2-111b. Study of kinship foster care families.

(a) The department shall conduct a study and make recommendations for improving services provided for kinship foster care families. This study shall include at a minimum:

(1) A review of best practices in other states;

(2) A proposal for an alternate system of regulation for kinship foster care that includes the same reimbursement as other foster care families as well as a reasonable time period for obtaining certification;

(3) An evaluation of what training and supports are needed to ensure that kinship care homes are successful.
(b) The results of this shall be shared with all members of the Legislature by October 1, 2019.

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

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

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

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

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

(e) This section does not apply to:

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

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;
(3) Summer recreation camps operated for children attending sessions for periods not exceeding 30 days;

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

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

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through 12th grade students when the program is monitored by the West Virginia Department of Education; or

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

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

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

(C) The programs’ primary source of funding is not from fees for service except for programs operated by county parks and recreation commissions, boards and municipalities; and
(D) The program has a formalized monitoring system in place.

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

(g) Any informal family child-care home or relative family child-care home may voluntarily register and obtain a certificate of registration from the department.

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

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

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

(A) A designated relocation site and evacuation;

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

(C) Procedures to address the needs of individual children including children with special needs;
(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management officials; and

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

(2) A child-care service shall update the evacuation plan by December 31 of each year. If a child-care service fails to update the plan, no action shall be taken against the child-care services license or registration until notice is provided and the child-care service is given 30 days after the receipt of notice to provide an updated plan.

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

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

(j) A residential child care center which has entered into a contract with the department to provide services to a certain number of foster children, shall accept any foster child who meets the residential child care center’s program criteria, if the residential child care center has not met its maximum capacity as provided for in the contract. Any residential child-care center who has entered into a contract with the department may not discharge any child in its program, except as provided in the contract, including that if the youth does not meet the residential treatment level and target population, the provider shall request a MDT and work toward an alternative placement.
§49-2-708. Rule-making authority.

(a) The Secretary of the Department of Health and Human Resources is authorized to propose rules for legislative approval necessary to implement this article in accordance with §29A-3-1 et seq. of this code.

(b) The rules:

(1) Shall create a three year certification period for a foster home, unless a substantial change occurs. A home safety assessment is performed at least annually. The department has sole authority to determine if a substantial change has occurred;

(2) Shall require that a criminal background check be conducted at the time of the recertification;

(3) May not prevent the placement or cause the removal of a foster child for cosmetic damage to a residence. “Cosmetic damages” means damage that does not affect the safety or wellbeing of a child;

(4) Shall permit the use of dedicated sleeping spaces as appropriate for the child’s needs and age, and similar to the sleeping spaces for other household members; and

(5) Shall review and update the legislative rules while considering normalcy and the reasonable and prudent parent standard.

(c) Notwithstanding the time frames in §29A-3-1 et seq., of this code the department shall revise the foster care legislative rules and shall submit for review and approval to the Rule-Making Review Committee by October 31, 2019.

ARTICLE 4. COURT ACTIONS.

§49-4-108. Payment of services.

(a) At any time during any proceedings brought pursuant to this chapter, the court may upon its own motion,
or upon a motion of any party, order the Department of
Health and Human Resources to pay the Medicaid rates for
professional services rendered by a health care professional
to a child or other party to the proceedings. Professional
services include, but are not limited to, treatment, therapy,
counseling, evaluation, report preparation, consultation and
preparation of expert testimony. A health care professional
shall be paid by the Department of Health and Human
Resources upon completion of services and submission of a
final report or other information and documentation as
required by the policies implemented by the Department of
Health and Human Resources: Provided, That if the service
is covered by Medicaid and the service is not provided
within 30 days, the court may order the service to be
provided by a provider at a rate higher than the Medicaid
rate. The department may object and request to be heard,
after which the court shall issue findings of fact and
conclusions of law supporting its decision.

(b) At any time during any proceeding brought pursuant
to this chapter, the court may upon its own motion, or upon
a motion of any party, order the Department of Health and
Human Resources to pay for socially necessary services
rendered by an entity who has agreed to comply with §9-2-
6(21) of this code. The Department of Health and Human
Resources shall set the reimbursement rates for the socially
necessary services: Provided, That if services are not
provided within 30 days, the court may order a service to be
provided by a provider at a rate higher than the department
established rate. The department may object and request to
be heard, after which the court shall issue findings of fact
and conclusions of law supporting its decision.

§49-4-406. Multidisciplinary treatment process for status
offenders or delinquents; requirements; custody; procedure;
reports; cooperation; inadmissibility of certain statements.

(a) When a juvenile is adjudicated as a status offender
pursuant to §49-4-711 of this code, the Department of
Health and Human Resources shall promptly convene a
multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a pre-adjudicatory community supervision period pursuant to §49-4-708 of this code, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department’s custody or placing the juvenile out-of-home at the department’s expense pursuant to §49-4-714 of this code. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least 15 working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(c) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Corrections and Rehabilitation, including those cases in
which the juvenile has been committed for examination and diagnosis, or the court considers commitment for examination and diagnosis, the Division of Corrections and Rehabilitation shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Corrections and Rehabilitation, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Corrections and Rehabilitation without an active service plan for more than 60 days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any assessment of a juvenile, preparing an individualized service plan and submitting the plan and any assessment to the court.

(2) In juvenile proceedings conducted pursuant to §49-4-701 et seq. of this code, the following representatives shall serve as members and attend each meeting of the multidisciplinary treatment team, so long as they receive notice at least seven days prior to the meeting:

(A) The juvenile;

(B) The juvenile’s case manager in the Department of Health and Human Resources or the Division of Corrections and Rehabilitation;
(C) The juvenile’s parent, guardian or custodian;

(D) The juvenile’s attorney;

(E) Any attorney representing a member of the multidisciplinary treatment team;

(F) The prosecuting attorney or his or her designee;

(G) The county school superintendent or the superintendent’s designee;

(H) A treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment; and

(I) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment team. When appropriate, the juvenile case manager in the Department of Health and Human Resources and the Division of Corrections and Rehabilitation shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile’s best interest.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also determine and advise the court as to the individual
treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(4) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall report to the court on the progress of the plan or if additional modification is necessary.

(5) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and §49-4-409 of this code govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to §49-4-701 through §49-4-725 of this code, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.
§49-4-413. Individualized case planning.

(a) For any juvenile ordered to probation supervision pursuant to §49-4-714 of this code, the probation officer assigned to the juvenile shall develop and implement an individualized case plan in consultation with the juvenile’s parents, guardian or custodian, and other appropriate parties, and based upon the results of a needs assessment conducted within 90 days prior to the disposition to probation. The probation officer shall work with the juvenile and his or her family, guardian or custodian to implement the case plan following disposition. At a minimum, the case plan shall:

(1) Identify the actions to be taken by the juvenile and, if appropriate, the juvenile’s parents, guardian or custodian to ensure future lawful conduct and compliance with the court’s disposition order; and

(2) Identify the services to be offered and provided to the juvenile and, if appropriate, the juvenile’s parents, guardian or custodian and may include services to address: Mental health and substance abuse issues; education; individual, group and family counseling services; community restoration; or other relevant concerns identified by the probation officer.

(b) For any juvenile disposed to an out-of-home placement with the department, the department shall ensure that the residential service provider develops and implements an individualized case plan based upon the recommendations of the multidisciplinary team pursuant to §49-4-406 of this code and the results of a needs assessment. At a minimum, the case plan shall include:

(1) Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the residential service providers; and
(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

(c) For any juvenile committed to the Division of Corrections and Rehabilitation, the Division of Corrections and Rehabilitation shall develop and implement an individualized case plan based upon the recommendations made to the court by the multidisciplinary team pursuant to §49-4-406(c) of this code and the results of a risk and needs assessment. At a minimum, the case plan shall include:

(1) Specific correctional goals and the actions to be taken by the juvenile to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the Division of Corrections and Rehabilitation and any contracted service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

(a) Child and family case plans. — Following a determination pursuant to §49-4-602 of this code wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child’s case plan, including the permanency plan for the child. The term “case plan” means a written document that includes, where applicable, the requirements of the family case plan as
provided in §49-4-408 of this code and that also includes, at a minimum, the following:

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

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

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

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

1. Dismiss the petition;
2. Refer the child, the abusing parent, the battered
   parent or other family members to a community agency for
   needed assistance and dismiss the petition;
3. Return the child to his or her own home under
   supervision of the department;
4. Order terms of supervision calculated to assist the
   child and any abusing parent or battered parent or parents or
   custodian which prescribe the manner of supervision and
   care of the child and which are within the ability of any
   parent or parents or custodian to perform;
5. Upon a finding that the abusing parent or battered
   parent or parents are presently unwilling or unable to
   provide adequately for the child’s needs, commit the child
   temporarily to the care, custody, and control of the state
department, a licensed private child welfare agency, or a
suitable person who may be appointed guardian by the
   court. The court order shall state:
   A. That continuation in the home is contrary to the best
      interests of the child and why;
   B. Whether or not the department has made reasonable
      efforts, with the child’s health and safety being the
      paramount concern, to preserve the family, or some portion
      thereof, and to prevent or eliminate the need for removing
      the child from the child’s home and to make it possible for
      the child to safely return home;
(C) Whether the department has made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

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

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

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and willing relative; or

(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 of this code;

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

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

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

(C) Other factors as the court considers necessary and
proper. Notwithstanding any other provision of this article,
the court shall give consideration to the wishes of a child 14
years of age or older or otherwise of an age of discretion as
determined by the court regarding the permanent
termination of parental rights. No adoption of a child shall
take place until all proceedings for termination of parental
rights under this article and appeals thereof are final. In
determining whether or not parental rights should be
terminated, the court shall consider the efforts made by the
department to provide remedial and reunification services to
the parent. The court order shall state:

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

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

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

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

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

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

(B) The parent has:

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

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

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

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

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

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

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

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

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

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child’s return to their care, custody and control;
(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child;

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

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child; and

(6) The battered parent’s parenting skills have been seriously impaired and the person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan, or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(d) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.
(e) The court may not terminate the parental right of a parent on the sole basis that the parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 et seq., for substance use disorder, as long as the parent is successfully fulfilling his or her treatment obligations in the medication-assisted treatment program.

§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placements; findings; notice; permanent placement review.

(a) Permanency hearing when reasonable efforts are not required. — If the court finds, pursuant to this article, that the department is not required to make reasonable efforts to preserve the family, then, notwithstanding any other provision, a permanency hearing must be held within 30 days following the entry of the court order so finding, and a permanent placement review hearing must be conducted at least once every 90 days thereafter until a permanent placement is achieved.

(b) Permanency hearing every 12 months until permanency is achieved. — If, 12 months after receipt by the department or its authorized agent of physical care, custody, and control of a child either by a court-ordered placement or by a voluntary agreement, the department has not placed a child in an adoptive home, placed the child with a natural parent, placed the child in legal guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a permanency hearing. The department shall file a progress report with the court detailing the efforts that have been made to place the child in a permanent home and copies of the child’s case plan, including the permanency plan as defined in §49-1-201 and §49-4-604 of this code. Copies of the report shall be sent to the parties and all persons entitled to notice and the right to be heard. The court shall schedule a hearing, giving notice and the right to be present to the child’s attorney; the child; the child’s parents; the child’s guardians; the child’s foster parents; any preadoptive parent, or any relative providing care for the
child; any person entitled to notice and the right to be heard; 
and other persons as the court may, in its discretion, direct. 
The child’s presence may be waived by the child’s attorney 
at the request of the child or if the child is younger than 12 
years and would suffer emotional harm. The purpose of the 
hearing is to review the child’s case, to determine whether 
and under what conditions the child’s commitment to the 
department shall continue, to determine what efforts are 
necessary to provide the child with a permanent home, and 
to determine if the department has made reasonable efforts 
to finalize the permanency plan. The court shall conduct 
another permanency hearing within 12 months thereafter for 
each child who remains in the care, custody, and control of 
the department until the child is placed in an adoptive home, 
returned to his or her parents, placed in legal guardianship, 
or permanently placed with a fit and willing relative.

(c) Transitional planning for older children. — In the 
case of a child who has attained 16 years of age, the court 
shall determine the services needed to assist the child to 
make the transition from foster care to independent living. 
The child’s case plan should specify services aimed at 
transitioning the child into adulthood. When a child turns 
17, or as soon as a child aged 17 comes into a case, the 
department must immediately provide the child with 
assistance and support in developing a transition plan that is 
personalized at the direction of the child. The plan must 
include specific options on housing, health insurance, 
education, local opportunities for mentors, continuing 
support services, work force support, and employment 
services, and the plan should be as detailed as the child may 
elect. In addition to these requirements, when a child with 
special needs turns 17, or as soon as a child aged 17 with 
special needs comes into a case, he or she is entitled to the 
appointment of a department adult services worker to the 
multidisciplinary treatment team, and coordination between 
the multidisciplinary treatment team and other transition 
planning teams, such as special education individualized 
education planning (IEP) teams.
(d) Out-of-state placements. — A court may not order a child to be placed in an out-of-state facility unless the child is diagnosed with a health issue that no in-state facility or program serves, unless a placement out of state is in closer proximity to the child’s family for the necessary care, or the services are able to be provided more timely. If the child is to be placed with a relative or other responsible person out of state, the court shall use judicial leadership to help expedite the process under the Interstate Compact for the Placement of Children provided in §49-7-101 and §49-7-102 and the Uniform Child Custody Jurisdiction and Enforcement Act provided in §48-20-101 et seq. of this code.

(e) Findings in order. — At the conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an order containing all the appropriate findings. The court order shall state:

(1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made the effort unreasonable;

(2) Whether or not the department made reasonable efforts to finalize the permanency plan and concurrent plan for the child;

(3) The appropriateness of the child’s current placement, including its distance from the child’s home and whether or not it is the least restrictive one (most family-like one) available;

(4) The appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;

(5) Services required to meet the child’s needs and achieve permanency; and
(6) In addition, in the case of any child for whom another planned permanent living arrangement is the permanency plan, the court shall: (A) Inquire of the child about the desired permanency outcome for the child; (B) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child; and (C) provide in the court order compelling reasons why it continues to not be in the best interest of the child to (i) return home, (ii) be placed for adoption, (iii) be placed with a legal guardian, or (iv) be placed with a fit and willing relative.

(f) The department shall annually report to the court the current status of the placements of children in the care, custody and control of the state department who have not been adopted.

(g) The department shall file a report with the court in any case where any child in the custody of the state receives more than three placements in one year no later than 30 days after the third placement. This report shall be provided to all parties and persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a permanent home. No report may be provided to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.

(h) The department shall give actual notice, in writing, to the court, the child, the child’s attorney, the parents and the parents’ attorney at least 48 hours prior to the move if this is a planned move, or within 48 hours of the next business day after the move if the child is in imminent danger in the child’s current placement, except where the notification would endanger the child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable after notice to explore placement options. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider.
No notice may be provided pursuant to this provision to any
parent or parent’s attorney whose parental rights have been
terminated pursuant to this article.

(i) Nothing in this article precludes any party from
petitioning the court for review of the child’s case at any
time. The court shall grant the petition upon a showing that
there is a change in circumstance or needs of the child that
warrants court review.

(j) Any foster parent, preadoptive parent or relative
providing care for the child shall be given notice of and the
right to be heard at the permanency hearing provided in this
section.

§49-4-711. Adjudication for alleged status offenders and
delinquents; mandatory initial disposition of status
offenders.

At the outset of an adjudicatory hearing, the court shall
inquire of the juvenile whether he or she wishes to admit or
deny the allegations in the petition. The juvenile may elect
to stand silent, in which event the court shall enter a general
denial of all allegations in the petition.

(1) If the respondent juvenile admits the allegations of
the petition, the court shall consider the admission to be
proof of the allegations if the court finds: (A) The
respondent fully understands all of his or her rights under
this article; (B) the respondent voluntarily, intelligently and
knowingly admits all facts requisite for an adjudication; and
(C) the respondent in his or her admission has not set forth
facts which constitute a defense to the allegations.

(2) If the respondent juvenile denies the allegations, the
court shall dispose of all pretrial motions and the court or
jury shall proceed to hear evidence.

(3) If the allegations in a petition alleging that the
juvenile is delinquent are admitted or are sustained by proof
beyond a reasonable doubt, the court shall schedule the
matter for disposition pursuant to §49-4-704 of this code. The court shall receive and consider the results of the needs assessment, as defined in §49-1-206 of this code, prior to or at the disposition.

(4) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing evidence, the court shall consider the results of the needs assessment, as defined in §49-1-206 of this code, prior to or at the disposition and refer the juvenile to the Department of Health and Human Resources for services, pursuant to §49-4-712 of this code, and order the department to report back to the court with regard to the juvenile’s progress at least every 90 days or until the court, upon motion or sua sponte, orders further disposition under §49-4-712 of this code or dismisses the case from its docket: Provided, That in a judicial circuit operating a truancy program, a circuit judge may, in lieu of referring truant juveniles to the department, order that the juveniles be supervised by his or her probation office: Provided, however, That a circuit judge may also refer a truant juvenile to a truancy diversion specialist.

(5) If the allegations in a petition are not sustained by evidence as provided in §49-4-711(c) and §49-4-711(d) of this code, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(6) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court. The record shall include the treatment and rehabilitation plan the court has adopted after recommendation by the multidisciplinary team as provided for in §49-4-406 of this code.

§49-4-714. Disposition of juvenile delinquents; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the juvenile shall,
upon request of the court, make an investigation of the
environment of the juvenile and the alternative dispositions
possible. The court, upon its own motion, or upon request
of counsel, may order the use of a standardized screener, as
defined in §49-1-206 of this code or, if additional
information is necessary, a psychological examination of
the juvenile. The report of an examination and other
investigative and social reports shall not be relied upon the
court in making a determination of adjudication. Unless
waived, copies of the report shall be provided to counsel for
the petitioner and counsel for the juvenile no later than 72
hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall receive
and consider the results of a needs assessment, as defined in
§49-1-206 of this code, and shall conduct the disposition,
giving all parties an opportunity to be heard. The disposition
may include reasonable and relevant orders to the parents,
custodians or guardians of the juvenile as is necessary and
proper to effectuate the disposition. At disposition the court
shall not be limited to the relief sought in the petition and
shall, in electing from the following alternatives, consider
the best interests of the juvenile and the welfare of the
public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile’s parent or
custodian to a community agency for needed assistance and
dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-
parental supervision: (A) Place the juvenile under the
supervision of a probation officer of the court or of the court
of the county where the juvenile has his or her usual place
of abode or other person while leaving the juvenile in
custody of his or her parent or custodian; and (B) prescribe
a program of treatment or therapy or limit the juvenile’s
activities under terms which are reasonable and within the
child’s ability to perform, including participation in the litter
control program established pursuant to §22-15A-3 of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 et seq. of this code and guidelines promulgated by the Supreme Court of Appeals;

(5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency, the court may commit the juvenile to the custody of the Director of the Division of Corrections and Rehabilitation for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider alternative sentencing arrangements.

(B) Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile’s best interests or required by the public welfare to place the juvenile in the custody of the Division of Corrections and Rehabilitation, the court shall provide the Division of Corrections and Rehabilitation with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to
school records, psychological reports and evaluations, needs assessment results, medical reports and evaluations or any other such records as may be in the court’s possession as would enable the Division of Corrections and Rehabilitation to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender.

(C) Commitments may not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable term of confinement to be served in a juvenile correctional facility shall take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in §27-5-4(c) and §27-5-4(d) of this code, commit the juvenile to a mental health facility in accordance with the juvenile’s treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible.

The court shall make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community: Provided, That a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home placement within the Division of Corrections and Rehabilitation or the department if that juvenile has no prior adjudications as either a status offender or as a delinquent,
or no prior dispositions to a pre-adjudicatory improvement period or probation for the current matter, excluding placements made for abuse or neglect: Provided, however, That if the court finds by clear and convincing evidence that there is a significant and likely risk of harm, as determined by a needs assessment, to the juvenile, a family member or the public and that continued placement in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-of-home placement: Provided further, That the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any disposition is subject to appeal to the Supreme Court of Appeals.

(e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(f) Following a disposition under §49-4-714(b)(4), §49-4-714(b)(5), or §49-4-714(b)(6) of this code, the court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted upon recommendation of the multidisciplinary team under §49-4-406 of this code.
(g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing the person as an adult.

§49-4-724. Standardized assessments.

(a) The Supreme Court of Appeals is requested to adopt a risk and needs assessment to be used for adjudicated delinquents, detained and delivered to, or committed to the custody of the Commissioner of Corrections and Rehabilitation. A validation study of the risk and needs assessment may be conducted at least every three years to ensure that the risk and needs assessment is predictive of the risk of reoffending.

(b) Each juvenile adjudicated for a delinquency offense and committed or detained with the Division of Corrections and Rehabilitation in accordance with §49-4-714(b)(5)(A) of this code shall undergo a risk and needs assessment prior to disposition to identify specific factors that predict a juvenile’s likelihood of reoffending and, when appropriately addressed, may reduce the likelihood of reoffending. The risk and needs assessment may be conducted by a division worker trained to conduct the risk and needs assessment.

(c) Each multidisciplinary team convened pursuant to §49-4-406(c) of this code shall receive and consider the results of the risk and needs assessment of the juvenile.

(d) The results of the risk and needs assessment shall be provided to the court prior to disposition or at the time of the dispositional hearing.
AN ACT recognizing and declaring certain claims against agencies of the state to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

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

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agency thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Legislative Claims Commission which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Legislative Claims Commission on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings
of fact and also by the adoption of the findings of fact by the Legislative Claims Commission as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements, or other satisfactory documents as required by §12-3-10 of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

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

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AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Department of Administration; Department of Administration, Office of Technology; Enterprise Resource Planning Board;
Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities; Department of Health and Human Resources, Bureau for Public Health; Department of Health and Human Resources, Office of Chief Medical Examiner; Department of Health and Human Resources, Office of Laboratory Services; Department of Military Affairs & Public Safety, Division of Corrections and Rehabilitation; Department of Military Affairs & Public Safety, Division of Corrections and Rehabilitation, Regional Jail Authority; Department of Military Affairs & Public Safety, Regional Jail and Correctional Facility Authority; Secretary of State; Department of Transportation, Division of Highways; Department of Transportation, Division of Motor Vehicles; and Department of Veterans Assistance to be moral obligations of the state and directing payment thereof.

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

(a) Claim against the Department of Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

WV Association of Rehabilitation Facilities, Inc.......................$2,172.78

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


(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Ricoh USA.............................................. $23,640.96
(2) Ricoh USA.............................................. $92,727.00
(3) Verizon Business .................................... $28,160.00
(4) Verizon Business .................................... $56,780.00

(c) Claim against the Enterprise Resource Planning Board:

(TO BE PAID FROM SPECIAL REVENUE FUND)

WV Association of Rehabilitation Facilities, Inc...................... $2,492.25

(d) Claim against the Department of Environmental Protection:

(TO BE PAID FROM SPECIAL REVENUE FUND)

Potesta & Associates Inc................................ $29,500.00

(e) Claim against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

National Medical Services, Inc......................... $103,440.66

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

(TO BE PAID FROM GENERAL REVENUE FUND)

First Databank Inc. ..................................... $23,235.00

(g) Claims against the Department of Health and Human Resources, Bureau for Public Health:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) GlaxoSmithKline Pharmaceuticals .......... $43,290.00
(2) Sanofi Pasteur Inc. ................................. $158,386.32
(3) Social Solutions Global, Inc. ................. $27,445.50

(h) Claims against the Department of Health and Human Resources, Office of Chief Medical Examiner:

(TO BE PAID FROM GENERAL REVENUE FUND)

Microgenics Corporation.............................. $6,167.00

(i) Claims against the Department of Health and Human Resources, Office of Laboratory Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

Pitney Bowes Inc........................................ $11,969.46

(j) Claims against the Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Wendell K. Ash................................. $200.00
(2) Wendell K. Ash.................................... $52.95
(3) Wendell K. Ash................................. $33.49
(4) Gary Baker ........................................ $25.00
(5) Gary R. Baker................................. $1,674.00
(6) Foster Bowen ................................. $856.32
(7) Anthony William Cartagena.............. $884.75
(8) Thomas G. Carter Jr. ................. $120.00
(9) Bannar C. Catlett............................... $793.00
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94  (36) Christopher Roof ....................................... $41.50
95  (37) Christopher Roof ..................................... $187.50
96  (38) Brian John Stone ...................................... $1,179.47
97  (39) Charles Taylor ........................................... $40.00
98  (40) Jeffrey Taylor .......................................... $130.00
99  (41) Arthur Thornton ........................................ $30.44
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101 (43) Phillip A. Ward ....................................... $511.27
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105 (47) John Wilson ............................................. $130.00
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110 (52) William B. Wriston ................................... $54.74
111 (53) Henry Keith Wykle .................................... $252.90
(k) Claims against the Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation, Regional Jail Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

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(l) Claims against the Department of Military Affairs and Public Safety, Regional Jail and Correctional Facility Authority:

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(m) Claim against the Secretary of State:

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(n) Claims against Department of Transportation, Division of Highways:

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Christopher Abraham ............................. $212.35
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Karen S. Adams ................................... $399.06
Karen S. Adams .................................... $183.87
Roma J. Adams .................................... $1,453.40
Matthew Adkins and Annie Adkins ....... $899.25
Shane Adkins and
Sarah Elizabeth Adkins ......................... $186.18
John R. Akers ..................................... $231.64
Paul F. Alderman and
Betty A. Alderman ................................. $331.52
Artvetta Alexander and
Marcus K. Patterson ............................. $79.22
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| 164 | (16) | Deborah A. Aman-Paugh ........................ | $151.50 |
| 165 | (17) | Timothy A. Amick .................................. | $119.99 |
| 166 | (18) | Howard D. Anderson and Marquita J. Anderson ........ | $323.90 |
| 168 | (19) | Kathy J. Anderson ................................... | $348.47 |
| 169 | (20) | Thomas Andreas........................................ | $250.00 |
| 170 | (21) | Ivan Antill Jr. ........................................ | $250.00 |
| 171 | (22) | David W. Apts ........................................... | $1,000.00 |
| 172 | (23) | Jason L. Arthur and Brandy Arthur .......... | $309.52 |
| 173 | (24) | Joel Kevin Arthur and Sonya A. Arthur .... | $294.43 |
| 174 | (25) | Charles Arthurs ........................................ | $250.00 |
| 175 | (26) | Brian Scott Asbury .................................... | $79.72 |
| 176 | (27) | Richard Asherman ..................................... | $17,152.00 |
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| 179 | (30) | Jasmine Austin ......................................... | $4,567.39 |
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| 185 | (34) | Jennifer R. Baldwin and Brian D. Baldwin ........... | $225.07 |</p>
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Ch. 46] CLAIMS AGAINST THE STATE 571

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780 (565) Charles M. Proctor Sr. and 
           Lou Ann Proctor ................................ $1,000.00
782 (566) Charles M. Proctor Sr. and 
           Lou Ann Proctor ................................ $1,498.65
784 (567) Betty Jo Pryce-Morehead ....................... $500.00
785 (568) Lisa D. Raber and Bryan Raber .............. $393.26
786 (569) Melissa A. Raber and Joseph A. Raber .... $6,500.00
787 (570) Jan A. Rapp and Byron L. Rapp .............. $175.96
788 (571) Deborah L. Ratliff and James Ratliff ..... $172.25
789 (572) Virginia Rayburn and 
           Gregory L. Rayburn ............................ $294.25
791 (573) Paul A. Redford and Suzette M. Redford .... $519.77
792 (574) Patrick J. Reilly and Paula L. Reilly ...... $89.99
793 (575) Lisa Renner and David Renner ............... $456.00
794 (576) Steve A. Reynolds .............................. $500.00
795 (577) Clara P. Rhodes and Thomas E. Rhodes ... $250.00
796 (578) Daniel Paul Rhodes ......................... $466.62
797 (579) Steven Rhyne .................................. $1,408.89
798 (580) Jack J. Richmond ............................... $500.00
799 (581) Travis Riffe .................................... $508.94
800 (582) James W. Riffle III and Jamie D. Riffle ... $881.99
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James L. Snider ...................................... $161.60
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Frances M. Sokos and Gus M. Sokos...... $238.50
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Jeri Swingle ................................. $500.00
Mary E. Sword .............................. $239.90
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Constance Van Gilder and Gregory T. Van Gilder .................. $290.00
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Jody Veith and Robert Veith .................................. $202.35
Natalie D. Vinton ................................................ $500.00
Natalie D. Vinton ................................................ $112.58
Shelby Vrescak and Julius Vrescak .................... $159.98
Aaron Wagner ........................................................ $95.30
Sandra S. Walker and Gary L. Walker ......................... $500.00
Ryan S. Walther ................................................... $362.33
Sarah Marie Ware ............................................... $252.28
Roy L. Watkins and Anita J. Watkins ....................... $1,000.00
Juanita G. Watts and David W. Watts .................... $171.20
Monica Renee Watts ........................................... $552,500.00
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Tenyah N. Wheeler ................................. $404.85
Heather Whipkey and Mark Whipkey .... $419.60
Joanna White........................................... $168.54
Mark S. White and Pamela C. White ...... $392.55
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Vincen W. White and Bonnie White....... $500.00
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Bruce S. Whoolery and
Rose Marie Whoolery .............................. $129.27
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Sean Wightman and Rodney Wightman .... $119.50
Lee Wiley ............................................. $1,000.00
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Julie R. Wilkinson................................. $445.14
Joyce Williams....................................... $495.54
Roger R. Williams and
Kandy K. McCauley ................................. $151.58
April F. Williams-Early......................... $299.60
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McKenna Williamson ............................... $92.88
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991 (754) Matthew J. Winans $948.64
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993 (756) Pauletta Witt $500.00
994 (757) Ahmed Witten $281.98
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1001 Laura Parker $1,200.00
1002 (764) Barbara Wright $449.40
1003 (765) Brian F. Wright and Amanda M. Wright $236.47
1004 (766) Jacob Turner Wright $500.00
1005 (767) Kyle P. Wyjad and Alyssa N. Wyjad $253.98
1006 (768) Michele Yates $1,380.00
1007 (769) Allen Yeager $250.00
1008 (770) Carolyn Young and James Young $275.51
1009 (771) Daniel R. Young $239.53
1010 (772) Ronald W. Young $180.91
1011 (773) Luther M. Young Jr $222.58
(o) Claim against the Department of Transportation, Division of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

Paul Ritchey and Dianna Ritchey ...................... $180.00

(p) Claims against the Department of Veterans Assistance:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Carl E. Short .......................................... $9,616.56
(2) WV Association of Rehabilitation Facilities, Inc. ................ $2,148.62

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Legislative Claims Commission shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Legislative Claims Commission shall deliver all releases obtained from claimants to the department against which the claim was allowed.
AN ACT to repeal §33-20F-1, §33-20F-1a, §33-20F-2, §33-20F-3, §33-20F-4, §33-20F-5, §33-20F-7, §33-20F-8, §33-20F-9, §33-20F-10, §33-20F-11, and §33-20F-12 of the Code of West Virginia, 1931, as amended, relating to obsolete provisions for the initial formation and operation of the West Virginia Physicians’ Mutual Insurance Company.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§1. Repeal of article creating Physicians’ Mutual Insurance Company Act.

That §33-20F-1 through §33-20F-12 of the Code of West Virginia are repealed.
CHAPTER 48

(H. B. 2608 - By Delegates Nelson, Criss and Espinosa)

[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to repeal §61-3-39l of the Code of West Virginia, 1931, as amended, relating to requiring printing the date a consumer deposit account was opened on paper check.

Be it enacted by the Legislature of West Virginia:

§61-3-39l. Checks on consumer deposit accounts to show date account was opened; consumer deposit account defined.

[Repealed.]

CHAPTER 49

(Com. Sub. for S. B. 360 - By Senator Trump)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6N-1, §46A-6N-2, §46A-6N-3, §46A-6N-4, §46A-6N-5, §46A-6N-6, §46A-6N-7, §46A-6N-8, and §46A-6N-9, all relating to consumer litigation financing; providing that a litigation financier shall register as a litigation financier in this state; providing registration requirements for business entities,
partnerships, and individuals; providing that litigation financiers shall secure a bond or an irrevocable letter of credit; providing to whom the bond is payable; requiring litigation financiers to amend their registration if their information changes or becomes inaccurate or incomplete; providing that the Secretary of State may promulgate rules; providing that the terms of a litigation financing transaction shall be set forth in a completed, written contract; providing that the litigation financing contract shall contain a right of rescission; providing that a litigation financing contract shall contain certain written acknowledgements and disclosures; providing that a litigation financier shall not pay, or offer to pay, commissions, referral fees, or other consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to the litigation financier; providing that a litigation financier shall not accept commissions, referral fees, rebates, or other consideration; providing that a litigation financier shall not advertise false or misleading information; providing that a litigation financier shall not refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist; permitting a litigation financier to refer a consumer without legal representation to a local or state bar referral service; providing that a litigation financier shall supply copies of the contract to the consumer and the consumer’s attorney; providing that a litigation financier shall not attempt to waive any of a consumer’s remedies; providing that a litigation financier shall not attempt to effect mandatory arbitration or otherwise effect waiver of a consumer’s right to a jury trial; providing that a litigation financier shall not offer or provide legal advice; providing that a litigation financier shall not assign a litigation financing contract to a third party; providing certain exceptions to assignment prohibition; providing that a litigation financier shall not report a consumer to a credit reporting agency; providing that a litigation financier shall not receive any right to direct or make decisions with respect to the conduct of a consumer’s legal claim; providing that an attorney or law firm retained by a consumer shall not have a financial interest in,
and shall not receive referral fees or other consideration from, a company offering litigation financing to consumers; providing that a litigation financing contract shall contain certain disclosures and terms; providing form disclosures; requiring disclosure of a litigation financing agreement to other litigation parties without awaiting a discovery request unless otherwise stipulated or ordered by the court; providing that a violation shall render the contract unenforceable; providing that a court may assess costs and attorneys’ fees against the defendant; clarifying authority of the Attorney General; providing that a contingent right to receive an amount under a legal claim may be assigned by a consumer; providing a priority of liens; providing exceptions for certain liens and claims; providing a maximum annual fee; providing a maximum frequency of annual fee charges; providing that fees may compound semiannually but may not compound based on any lesser time period; providing means for calculating annual percentage fee or rate of return; providing a maximum term for assessing fees; restricting incorporation of prior obligations; prohibiting litigation financiers from knowingly providing financing to a consumer with existing obligations to another litigation financier except under certain circumstances; and permitting multiple litigation financiers to contemporaneously provide financing to a consumer when the consumer and the consumer’s attorney consent to the agreement in writing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6N. CONSUMER LITIGATION FINANCING.

§46A-6N-1. Definitions.

For purposes of this article:

(1) “Consumer” means any natural person who resides, is present, or is domiciled in this state;

(2) “Litigation financier” means a person, entity, or partnership engaged in the business of litigation financing; and
“Litigation financing” or “litigation financing transaction”:

(A) Means a nonrecourse transaction in which financing is provided to a consumer in return for a consumer’s assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer’s judgment, award, settlement, or verdict obtained with respect to the consumer’s legal claim; and

(B) Does not include:

(i) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the West Virginia Rules of Professional Conduct;

(ii) A consumer loan, as defined by §46A-1-102 of this code;

(iii) A commercial tort claim, as defined by §46-9-102 of this code;

(iv) A claim under the Workers’ Compensation Law, compiled in chapter 23 of this code; or

(v) Normal or course of business lending or financing arrangements between an attorney or law firm and a lending institution.

§46A-6N-2. Litigation financier; registration; bond; public record; rules.

(a)(1) No litigation financier shall engage in a litigation financing transaction in this state unless it is registered as a litigation financier in this state.

(2) A litigation financier that is a business entity or partnership is registered in this state if:
(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code;

(B) It has a status of active and is in good standing as reflected in the records of the Secretary of State; and

(C) Its charter, articles of organization, certificate of limited partnership, or other organizational document, or, if a foreign entity, its West Virginia application for a certificate of authority, contains a statement that it shall be designated as a litigation financier pursuant to this article.

(3) A litigation financier that is not a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code; and

(B) It files an application for registration as a litigation financier on a form prescribed by the Secretary of State that contains the following:

(i) Applicant’s full legal name;

(ii) Business name of applicant, if any;

(iii) Physical street address and mailing address of the applicant;

(iv) A telephone number through which the applicant can be reached;

(v) The name, physical street address, mailing address, and telephone number for a West Virginia registered agent appointed to accept service of process on behalf of the applicant;

(vi) A statement that the applicant shall be designated as a litigation financier pursuant to this article; and

(vii) Any other information the Secretary of State deems necessary.
(b)(1) Each litigation financier shall file with the Secretary of State and have approved by the Office of the West Virginia Attorney General a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the state of West Virginia in an amount not less than $50,000.

(2) Such bond shall be payable to this state for the use of the Attorney General and any person who may have a cause of action against the obligor of the bond for any violation of this article. The bond shall continue in effect so long as a litigation financier is designated as a litigation financier in the records of the Secretary of State.

(c) A litigation financier shall amend its registration with the Secretary of State within 30 days whenever the information contained in such record changes or becomes inaccurate or incomplete in any respect.

(d) The Secretary of State, as appropriate, may promulgate rules in implementing this article, including, but not limited to, the adoption of fees to cover any administrative costs relating to administering this article.

§46A-6N-3. Litigation financier requirements.

A litigation financier shall fulfill each of the following requirements when engaged in litigation financing:

(1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled in with no incomplete sections when the contract is offered or presented to the consumer;

(2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five business days following the consumer’s receipt of the funds, or execution of the litigation financing contract, whichever is later, the consumer gives notice of
the rescission and returns any money already provided to
the consumer by the litigation financier;

(3) The litigation financing contract shall contain a
written acknowledgment by the consumer of whether the
consumer is represented by an attorney in the dispute;

(4) If the consumer acknowledges that the consumer is
represented by an attorney in the dispute, the litigation
financing contract shall include a written acknowledgment
executed by the consumer’s attorney in the dispute in which
the attorney acknowledges all of the following:

(A) The attorney has had the opportunity to review the
litigation financing contract on behalf of the consumer;

(B) The attorney is representing the consumer with
regard to the dispute that is the subject of the litigation
financing contract;

(C) The attorney has neither received nor paid a referral
fee or any other consideration from or to the litigation
financier, nor will the attorney receive or pay such a fee in
the future; and

(D) In the event that proceeds are paid into a settlement
fund or trust, the litigation financier shall notify the
administrator of the fund or trust of any outstanding liens
arising from the litigation financing contract.

§46A-6N-4. Litigation financier prohibitions.

(a) A litigation financier shall not:

(1) Pay or offer to pay commissions, referral fees, or
other forms of consideration to any attorney, law firm,
medical provider, chiropractor, physical therapist, or any of
their employees for referring a consumer to a litigation
financier;

(2) Accept any commissions, referral fees, rebates, or
other forms of consideration from an attorney, law firm,
medical provider, chiropractor, physical therapist, or any of their employees;

(3) Advertise false or misleading information regarding its products or services;

(4) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees: Provided, That if a consumer does not have legal representation, the provider may refer the consumer to a local or state bar referral service operated by a bar association;

(5) Fail to promptly supply copies of any and all complete litigation financing contracts to the consumer and the attorney representing the consumer in the dispute;

(6) Attempt to obtain in the litigation for which the litigation financing transaction exists a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, to which the consumer might otherwise be entitled;

(7) Attempt to effect in the litigation for which the litigation financing transaction exists mandatory arbitration or otherwise effect waiver of a consumer’s right to a trial by jury;

(8) Offer or provide legal advice to the consumer regarding the litigation financing or the underlying dispute;

(9) Assign, which includes securitizing, a litigation financing contract, in whole or in part, to a third party, however:

(A) §46A-6N-4(9) of this code does not prevent a litigation financier that retains responsibility for collecting payment, administering, or otherwise enforcing the litigation financing contract from making an assignment that is:
(i) To a wholly owned subsidiary of the litigation financier;

(ii) To an affiliate of the litigation financier that is under common control with the litigation financier; or

(iii) A grant of a security interest that is made pursuant to §46-9-101 et seq. of this code or is otherwise permitted by law; and

(B) If an assignment is authorized and made pursuant to §46A-6N-4(9) of this code, for purposes of this section, “litigation financier” includes a successor-in-interest to a litigation financing contract;

(10) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the litigation financier; or

(11) Receive any right to direct, nor make any decisions with respect to, the conduct of the consumer’s legal claim or any settlement or resolution. The right to make such decisions shall remain solely with the consumer and his or her attorney.

(b) An attorney or law firm retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.

(c) A personal injury attorney or law firm, practicing in the state of West Virginia, retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.

§46A-6N-5. Litigation financing contracts; disclosures.

(a) A litigation financing contract shall contain the disclosures specified in this section, which shall constitute material terms of the litigation financing contract.
(b) Unless otherwise specified, the disclosures shall be typed in at least 14-point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows:

(1) Each contract shall include consumer disclosures on the first two pages, to the extent possible. The consumer disclosures shall include:

(A) Notification that some or all of the funded amount may be taxable;

(B) A description of the consumer’s right of rescission;

(C) The total funded amount provided to the consumer under the contract;

(D) An itemization of charges;

(E) The total amount due from the consumer, in six-month intervals for 42 months, including all charges and fees;

(F) A statement that there are no charges or fees to be paid by the consumer other than what is disclosed on the disclosure form;

(G) In the event the consumer seeks more than one litigation financing contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed;

(H) A statement that if there is no recovery of any money from the consumer’s legal claim, the consumer shall owe nothing to the litigation financier;

(I) A statement that if the net proceeds of the claim are insufficient to repay the consumer’s indebtedness to the litigation financier, the litigation financier shall accept a
reduced sum as full payment of its funded amount and charges; and

(J) The following:

Consumer’s Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received financing from [insert name of the litigation financier] by: returning the funds to [insert name, office address, and office hours of the litigation financier] or by U. S. mail [insert name and mailing address of litigation financier]. For purposes of the return deadline by U. S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return.

(2) Within the body of the litigation financing contract, the following:

The litigation financier agrees that it has no right to and will not make any decisions about the conduct of your lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney;

(3) Within the body of the litigation financing contract, in all capital letters contained within a box, the following:

THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FINANCIER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION FINANCIER;
(4) Located immediately above the place on the litigation financing contract where the consumer’s signature is required, the following:

DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY. IF THIS CONTRACT CONTAINS ANY INCOMPLETE SECTIONS, YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THE CONTRACT PRIOR TO SIGNING IT. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES YOU MAY WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

§46A-6N-6. Third-party agreements.

Except as otherwise stipulated or ordered by the court, a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.

§46A-6N-7. Violation; enforcement.

(a) Any violation of this article shall make the litigation financing contract unenforceable by the litigation financier, the consumer, or any successor-in-interest to the litigation financing contract. The court may, in the event that judgment is awarded to the plaintiff, assess costs of the action, including reasonable attorneys’ fees, against the defendant.

(b) Nothing in this article shall be construed to limit the exercise of powers or the performance of the duties of the Attorney General, including those provided by the West Virginia Consumer Credit and Protection Act, which the
Attorney General is otherwise authorized or required to exercise or perform by law.

§46A-6N-8. Contingency rights; assignments; priority of lien, subrogation interest, or right of reimbursement.

(a) The contingent right to receive an amount of the potential proceeds of a legal claim may be assigned by a consumer, and that assignment is valid for the purposes of obtaining litigation financing from a litigation financier.

(b) The lien of a litigation financier on a consumer’s legal claim has priority over liens that attach and take effect subsequent to the attachment of the litigation financier’s lien to the consumer’s legal claim, except for the following:

(1) Attorney liens, insurance carrier liens, medical provider liens, or liens based upon subrogation interests or rights of reimbursement related to the consumer’s legal claim; and

(2) Child support, Medicare, tax, or any other statutory or governmental lien.

§46A-6N-9. Fees; terms; incorporation of obligations in agreement.

(a) A litigation financier may not charge the consumer an annual fee of more than 18 percent of the original amount of money provided to the consumer for the litigation financing transaction.

(b) Litigation financiers shall not charge a consumer the annual fee authorized by §46A-6N-9(a) of this code more than one time each year with regard to any single legal claim regardless of the number of litigation financing transactions that the litigation financier enters into with the consumer with respect to such legal claim.
(c) Fees assessed by a litigation financier may compound semiannually but may not compound based on any lesser time period.

(d) In calculating the annual percentage fee or rate of return, a litigation financier must include all charges payable directly or indirectly by the consumer, and must compute the rate based only on amounts actually received and retained by the consumer.

(e) A litigation financier may not assess fees for any period exceeding 42 months from the date of the contract with the consumer.

(f) Litigation financiers shall not enter into an agreement with a consumer that has the effect of incorporating the consumer’s obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.

(g) Litigation financiers shall not knowingly provide financing to a consumer who has previously assigned and/or sold a portion of the consumer’s right to proceeds from his or her legal claim without first making payment to and/or purchasing a prior unsatisfied litigation financier’s entire funded amount and contracted charges unless a lesser amount is otherwise expressly agreed to in writing by the litigation financiers; except multiple litigation financiers may agree to contemporaneously provide financing to a consumer, provided that the consumer and the consumer’s attorney consent to the agreement in writing.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §46A-6-107a, relating to warranties as to sales of motor vehicles; providing that a used motor vehicle may be sold “as is” under certain circumstances; providing certain disclosure requirements for “as is” sales of used motor vehicles; allowing cancellation of an “as is” sale by the end of the dealer’s third business day following the sale if the vehicle has mechanical issues; providing that a consumer shall sign and date the disclosure for an “as is” sale in order for the disclosure to be effective; providing that a merchant disclose in writing certain defects or malfunctions when selling a used motor vehicle “as is”; providing that the merchant provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle; and providing that an “as is” sale of a used motor vehicle waives implied warranties but does not waive any express warranties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-107a. Used motor vehicles sold “as is”.

(a) Notwithstanding the provisions of §46A-6-107 of this code, a used motor vehicle may be sold “as is” if:

1. The vehicle is inoperable and a total loss;
4 (2) The vehicle has been custom built or modified for show purposes or racing; or

6 (3) The vehicle is the following:

7 (A) Sold for less than $4,000;

8 (B) Driven more than 100,000 miles at the time sold; or

9 (C) Seven years of age or older as calculated from January 1 of the designated model year of the vehicle.

(b) A buyer who purchases a vehicle “as is” that meets the criteria set out in the provisions of §46A-6-107a(a)(3) of this code shall have the right to cancel the sale by the end of the dealer’s third business day following the sale. To cancel the sale, the “as is” vehicle must have a significant mechanical issue or issues that can be reasonably expected to have existed at the time of the sale. Cancellation shall become effective when the buyer returns the “as is” vehicle to the point of sale by the end of the dealer’s third business day following the sale.

(c) For the purposes of this section, a used motor vehicle is a “total loss” only if:

1 (1) There is material damage to the vehicle’s frame, unitized structure, or suspension system; and

2 (2) The projected cost of repairing the damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss.

(d) If a used motor vehicle is sold “as is” pursuant to this section, a merchant shall satisfy the following disclaimer requirements:

1 (1) A disclaimer must appear on the front page of the contract of sale;

2 (2) The disclaimer shall read as follows:
“AS IS”

34 THIS VEHICLE IS SOLD “AS IS”. THIS MEANS
35 THAT YOU WILL LOSE YOUR IMPLIED
36 WARRANTIES. YOU WILL HAVE TO PAY FOR ANY
37 REPAIRS NEEDED AFTER THE SALE. IF WE HAVE
38 MADE ANY PROMISES TO YOU, THE LAW SAYS WE
39 MUST KEEP OUR PROMISES EVEN IF WE SELL “AS
40 IS”. TO PROTECT YOURSELF, ASK US TO PUT ALL
41 PROMISES IN WRITING. YOU MAY HAVE THE
42 RIGHT TO CANCEL THIS SALE BY THE END OF THE
43 DEALER’S THIRD BUSINESS DAY FOLLOWING THE
44 SALE IF THE VEHICLE HAS SIGNIFICANT
45 MECHANICAL ISSUE THAT CAN BE REASONABLY
46 EXPECTED TO HAVE EXISTED AT THE TIME OF
47 THE SALE.

49 (3) The text of the disclaimer must be printed in 12-
50 point boldfaced type, except the heading, which must be in
51 16-point extra boldfaced type;

52 (4) The entire disclaimer must be boxed;

53 (5) The consumer shall sign and date within the box
54 containing the disclaimer prior to the sale;

55 (6) The merchant shall describe in writing any defects
56 or malfunctions, if any, disclosed to the merchant by a
57 previous owner of the used motor vehicle or discoverable
58 by the merchant after an inspection of the used motor
59 vehicle; and

60 (7) The merchant shall provide the consumer a copy of
61 a nationally recognized vehicle history report for the used
62 motor vehicle.

63 (e) An “as is” sale of a used motor vehicle waives
64 implied warranties, but does not waive any express
65 warranties, either oral or written, upon which the consumer
66 relied in entering into the transaction.
(f) The provisions of this section do not apply to motor vehicles sold as surplus by a state agency.

(g) The provisions of this section only apply to sales directly to consumers.

CHAPTER 51

(Com. Sub. for S. B. 657 - By Senator Sypolt)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §46A-6A-2 of the Code of West Virginia, 1931, as amended, relating to including certain new self-propelled agricultural vehicles in the definition of motor vehicle for the purpose of consumer protections related to express warranties by manufacturers of agricultural vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.


When used in this article, the following words, terms, and phrases shall have the meaning ascribed to them, except where the context indicates a different meaning:

(1) “Consumer” means:

(A) The purchaser, other than for purposes of resale, of a new motor vehicle used primarily for personal, family, or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor
(B) The purchaser, other than for purposes of resale, of a new vehicle described in paragraph (B), subdivision (4) of this section a person to whom the new vehicle is transferred during the duration of an express warranty applicable to the vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

(2) “Manufacturer” means a person engaged in the business of manufacturing, assembling, or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble, or distribute to dealers at least 10 new motor vehicles;

(3) “Manufacturer’s express warranty” and “warranty” mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty; and

(4) “Motor vehicle” means:

(A) Any passenger automobile purchased in this state or registered and titled in this state, including any pickup truck or van registered as a Class A motor vehicle under the provisions of §17A-10-1 et seq. of this code, and any self-propelled motor vehicle chassis of a motor home registered as a Class A or Class B motor vehicle under the provisions of §17A-10-1 et seq. of this code; or

(B) Any self-propelled vehicle designed primarily for, and used in, the occupation or business of farming, with a horsepower unit of 35 or greater.
AN ACT to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931, as amended, all relating to requirements for making consumer loans in West Virginia; modifying the authority to make regulated consumer loans; providing that a person must first obtain a license from the Commissioner of Banking authorizing him or her to make regulated consumer loans before engaging in the business of making regulated consumer loans, taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans; providing that the licensing provisions do not pertain to any collection agencies as defined and licensed by the West Virginia Collection Agency Act of 1973; and, adjusting threshold amounts of consumer loans for which certain finance charges can be imposed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-101. Authority to make loans.

Unless a person has first obtained a license from the commissioner authorizing the person to make regulated consumer loans, he or she may not engage in the business of:

(1) Making regulated consumer loans; or
(2) Taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans: Provided, That the licensing provisions of this act do not pertain to any “collection agency” as defined in, and licensed by, the “Collection Agency Act of 1973” at W. Va. Code §§47-16-1 et seq.

§46A-4-107. Loan finance charge for regulated consumer lenders.

(1) With respect to a regulated consumer loan, including a revolving loan account, a regulated consumer lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) On a loan of $3,500 or less which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 31 percent per year on the unpaid balance of the principal amount.

(3) On a loan greater than $3,500 but less than or equal to $15,000, or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 27 percent per year on the unpaid balance of the principal amount: Provided, That the loan finance charge on any loan greater than $15,000 may not exceed 18 percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than $3,500, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee: Provided, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of
the amount financed for any origination fee, points, or investigation fee. In any loan secured by real estate, the charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within 24 months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method or the total of the earlier and proposed charges does not exceed five percent of the amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of the charges is permissible and does not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended is, for purposes of this subsection, the amount financed. Other than herein Provided, no points, origination fee, investigation fee, or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by §46A-3-109 of this code, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing, or consolidation is governed by the provisions on rebate upon prepayment, refinancing, or consolidation contained in §46A-3-111 of this code.

(5) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and
differentiations the licensee may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) With respect to a revolving loan account:

(a) A charge may be made by a regulated consumer lender in each monthly billing cycle which is one-twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during the billing cycle.

For the purpose of this subdivision, a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a regulated consumer lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to 30.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding 50 cents if the billing cycle is monthly or longer or the pro rata part of 50 cents which bears the same relation to 50 cents as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the lender has made an annual
charge for the same period as permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this section, a regulated consumer lender may on a loan not secured by real estate of $3,500 or less contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed: Provided, That no other finance charges are imposed on the loan. The processing fee permitted under this subsection shall be included in the calculation of the loan finance charge and the financing of the fee shall be permissible and may not constitute charging interest on interest.

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive, and enforce the loan finance charge and other charges, including late fees, provided in the contract under the laws of the state where executed: Provided, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges may not be considered to be usurious or in violation of the provisions of this chapter or any other provisions of this code.
CHAPTER 53  
(Com. Sub. for S. B. 518 - By Senators Maroney, Plymale, Stollings, Tarr, Woelfel, Takubo and Swope)

[Passed March 2, 2019; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-417, relating to restricting the sale and trade of dextromethorphan; defining terms; setting age limits; and providing for a misdemeanor penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-417. Sale of dextromethorphan.

(a) As used in this section, “finished drug product” means a drug legally marketed under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) that is in finished dosage form.

(b) A person may not knowingly or willfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person under 18 years of age.

(c) A person under 18 years of age, unless an emancipated minor, may not purchase a finished drug product containing any quantity of dextromethorphan.

(d) A person making a retail sale of a finished drug product containing any quantity of dextromethorphan shall require and obtain proof of age from the purchaser before
completing the sale, unless from the purchaser’s outward appearance the person making the sale would reasonably presume the purchaser to be at least 25 years of age.

(e) This section does not apply to a medication containing dextromethorphan that is sold pursuant to a valid prescription.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and shall be fined not less than $100 nor more than $250.

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CHAPTER 54

(H. B. 2509 - By Delegates Pack, Dean, Wilson and Rohrbach)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §60A-4-403 of the Code of West Virginia, 1931, as amended, relating to creating the felony offense of a theft of a controlled substance; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-403. Prohibited acts C; penalties.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by section 307 of this act;
(2) To use in the course of the manufacture or
distribution of a controlled substance a registration number
which is fictitious, suspended, revoked, or issued to another
person;

(3) To acquire or obtain possession of a controlled
substance by misrepresentation, fraud, forgery, theft,
deception, or subterfuge;

(4) To furnish false or fraudulent material information
in, or omit any material information from, any application,
report, or other document required to be kept or filed under
this act, or any record required to be kept by this act; or

(5) To make, distribute, or possess any punch, die, plate,
stone, or other thing designed to print, imprint, or reproduce
the trademark, trade name, or other identifying mark,
imprint, or device of another or any likeness of any of the
foregoing upon any drug or container or labeling thereof so
as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a
felony and, upon conviction, may be imprisoned in a
correctional facility for not less than one year nor more than
four years, or fined not more than $30,000, or both.

CHAPTER 55

(Com. Sub. for S. B. 352 - By Senators Weld and
Cline)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]
the Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities; clarifying notice requirements; allowing the division to require surety; expanding acceptable forms of surety; allowing the division to utilize best value procurement; providing exception; establishing procedure for best value procurement; allowing for direct award procurement; establishing procedure for direct award procurement; allowing the division to run criminal background checks, financial background checks, licensing background checks, and credit checks to determine eligibility for award of contract; enumerating grounds upon which division shall disqualify vendors from being awarded a contract or having contract renewed; limiting disclosure under Freedom of Information Act of records obtained in response to solicitations for bids and records relating to solicitations for, or purchases of, items related to safe and secure running of any facility under jurisdiction of commissioner of division; creating special revenue fund; and providing for methods of disposition of surplus property owned by the division.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

(a) The provisions established in §5A-3-1 et seq. of this code do not apply to the division or any institution under the control of the division.

(b) When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of more than $2,500 and less than $25,000, the division shall solicit at least three bids, if possible, from vendors and make a written contract, or agreement, with the lowest responsible bidder. When the cost under any contract or agreement entered into by the division, other than compensation for personal
services, involves an expenditure of $25,000 or more, the
division shall make a written contract with the lowest
responsive, responsible bidder after public notice is
published, which notice shall state the general character of
the work and general character of the materials to be
furnished, the place where plans and specifications therefor
may be examined, and the time and place of receiving bids.
The notice may be published by an advertising medium the
division deems advisable. The division may also solicit
sealed bids by sending requests by mail or electronic
transmission to prospective vendors. But a contract for lease
of a correctional facility is not subject to the foregoing
requirements and the division may enter into the contract for
lease pursuant to negotiation upon the terms and conditions
and for the period as it finds to be reasonable and proper
under the circumstances and in the best interests of proper
operation or efficient acquisition or construction of the
projects. The division may reject any and all bids. A bond
with good and sufficient surety, approved by the division,
may be required by the division. The good and sufficient
surety may be in the form of a bid bond, performance bond,
payment bond, maintenance bond, labor and materials bond,
or any other type of surety deemed necessary by the
division.

(c) The division may use best value procurement to
enter into a contract when the commissioner determines in
writing that it is advantageous to the state.

(1) A solicitation for bids under best value procurement
shall be made in the same manner as provided in this
section.

(2) Best value procurement awards shall be based on
criteria set forth in the solicitation and information
contained in the proposals submitted in response to the
solicitation. Those criteria include, but are not limited to,
price and the total cost of acquiring, operating, maintaining,
and supporting a commodity or service over its projected
lifetime, as well as technical criteria. The technical criteria
may include, but are not limited to, the evaluated technical
merit of the bidder’s bid or proposal, the bidder’s past
performance, the degree to which a proposal exceeds other
proposals in technical merit, the utility of any novel or
unrequested items in the proposal, and the evaluated
probability of performing the requirements stated in the
solicitation on time, with high quality, and in a manner that
accomplishes the business objectives set forth in the
solicitation.

(3) The award must be made to the highest scoring
responsive and responsible bidder whose bid is determined,
in writing, to be most advantageous to the state, taking into
consideration all evaluation factors set forth in the best
value solicitation.

(4) The division may not use best value procurement to
enter into government construction contracts, including, but
not limited to, those set forth in §5-22-1 et seq. of this code.

(d)(1) The division may make a direct award of a
contract without competitive bidding if:

(A) The commissioner shall make a written
determination that the direct award is in the best interest of
the state;

(B) The division documents in writing that competition
is not available because there is no other source for the
commodity or service, or that no other source would be
willing or able to replace the existing source without a
detrimental effect on the division, the existence of a
detrimental effect being determined by the commissioner in
his or her sole discretion;

(C) The division publicly advertises a notice of intent to
make a direct award without competition in the state’s
official bid notification system, as well as any other public
advertisement that the division deems appropriate, for no
less than 10 business days; and
(D) No other vendor expresses an interest in providing the commodity or service in question.

(2) If a vendor expresses an interest in providing the commodity or service described in the notice of intent to make a direct award, then the division must convert the direct award to a competitive bid, unless the commissioner determines that the interest expressed by a vendor is unreasonable. The competitive bid may, at the discretion of the commissioner, be either a request for quotation or request for proposal.

(3) The notice of intent to make a direct award shall contain the following information:

(A) A description of the commodity or service for which a direct award will be made;

(B) A time period by which delivery must be made or performance must occur;

(C) The price that will be paid for the commodity or service;

(D) Any limitations that a competing vendor would need to satisfy;

(E) An invitation to all vendors interested in providing the commodity or service to make that interest known; and

(F) Contact information for the commissioner or his or her designee, and instructions to submit a statement of interest to the commissioner or his or her designee.

e) The commissioner, or division, shall not award a contract or renew a contract to any vendor or prospective vendor when the vendor or prospective vendor, or a related party to the vendor or prospective vendor, is a debtor and:

(1) The debt owed is an amount greater than $1,000 in the aggregate; or
(2) The debtor is in employer default.

(f) The division has the authority to run criminal background checks, financial background checks, a licensing check, and a credit check, and any vendor, or any and all principals in a company or corporation, must submit to said checks to be eligible to be awarded a contract for the division. The commissioner, or division, shall not award a contract to a vendor if any of the following are present:

(1) Conviction of an offense involving fraud or a felony offense in connection with obtaining or attempting to obtain a public contract or subcontract;

(2) Conviction of any federal or state antitrust statute relating to the submission of offers;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property in connection with the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations owed to the Workers’ Compensation Fund, as defined in §23-2C-1 et seq. of this code, and obligations under the West Virginia Unemployment Compensation Act and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under
any rule of the Bureau of Employment Programs or the Insurance Commission, the commissioner may award a contract: Provided, That in no event may the contract be awarded to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard, and other due process required by law;

(7) The vendor is an active and knowing participant in dividing or planning procurements to circumvent the $25,000 threshold requiring a sealed bid or otherwise avoid the use of a sealed bid; or

(8) Violation of the terms of public contracts or subcontracts for:

(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder;

(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify disqualification; or
(E) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

(g) Unless the context clearly requires a different meaning, for the purposes of this section, the term:

(1) “Debt” means any assessment, premium, penalty, fine, tax, or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, amounts owed to the Workers’ Compensation Fund as defined in §23-2C-1 et seq. of this code, penalty, or other assessment or surcharge presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

(2) “Debtor” means any individual, corporation, partnership, association, limited liability company, or any other form of business association owing a debt to the state or any of its political subdivisions, and includes any person or entity that is in employer default;

(3) “Employer default” means having an outstanding balance or liability to the Old Fund or to the Uninsured Employers’ Fund or being in policy default, as defined in §23-2C-2 of this code, failure to maintain mandatory workers’ compensation coverage, or failure to fully meet its obligations as a workers’ compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement;

(4) “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one
or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities; and

(5) “Related party” means a party, whether an individual, corporation, partnership, association, limited liability company, or any other form of business association or other entity whatever, related to any vendor by blood, marriage, ownership, or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually, or by effect, receive or control a portion of the benefit, profit, or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(h) The prohibitions of subdivision (5), subsection (f) of this section do not apply where a vendor has contested any tax administered pursuant to chapter 11 of this code, amount owed to the Workers’ Compensation Fund as defined in §23-2C-1 et seq. of this code, permit fee, or environmental fee or assessment and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(i) The division may disqualify a vendor if award to the vendor would jeopardize the safe, secure, and orderly operations of the division.

(j) All bids, contract proposals, or contracts with the state or any of its political subdivisions submitted or approved under the provisions of this code shall include an affidavit that the vendor, prospective vendor, or a related party to the vendor or prospective vendor is not in employer default and does not owe any debt in an amount in excess of $1,000 or, if a debt is owed, that the provisions of subsection (h) of this section apply.
(k) If the division has to make a purchase under emergency conditions, or an emergency situation, that jeopardizes the safe, secure, and orderly operations of the division, as deemed by the commissioner, and approved by the Secretary of the Department of Military Affairs and Public Safety, subsection (b) of this section shall not apply.

(l) The commissioner may enter into agreements with medical schools and institutions of higher education in this state to develop standards for appropriate and innovative medical programming and care for inmates: Provided, That the division will follow the procedures set forth in subsection (b) of this section for delivery of regular and normal medical care within the facilities.

(m) Notwithstanding any other provision of this code to the contrary, any records obtained in response to solicitations for bids from the division shall not be subject to disclosure pursuant to §29B-1-1 et seq. of this code, until and unless the time frame for submission of bids has closed: Provided, That once bids close, the records may be exempt from disclosure pursuant to §29B-1-4 of this code. Any record relating to any solicitation for, or purchase of, any item related to the safe and secure running of any facility under the jurisdiction of the Commissioner of the Division of Corrections and Rehabilitation is not subject to disclosure pursuant to §29B-1-1 et seq. of this code.

§15A-3-14a. Creation of special fund for surplus property revenue; disposal of surplus property.

(a) There is hereby created a special revenue fund in the State Treasury known as the Division of Corrections and Rehabilitation Surplus Property Fund. Moneys from this fund shall be used for facility maintenance and repair.

(b) The commissioner is hereby authorized to dispose of surplus state property owned by the division in the following manner:
(1) Transferring the particular commodities or expendable commodities between departments;

(2) Selling the commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in this state when the volunteer fire departments have been held exempt from taxation under Section 501(c) of the Internal Revenue Code;

(3) Trading in the commodities as a part payment on the purchase of new commodities;

(4) Cannibalizing the commodities pursuant to procedures established under subsection (g) of this section;

(5) Properly disposing of the commodities as waste;

(6) Selling the commodities to the general public at the posted price or to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms, and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication area for the publication is the county in which the sale is to be conducted. The sale may also be advertised in other advertising media that the division considers advisable. The division may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids; or

(7) Selling the commodities to the highest bidder by means of an internet auction site approved by the division, as set forth in an emergency rule promulgated pursuant to the provisions of §29A-3-15 of this code.

(c) Upon the sale to the general public or transfer of commodities or expendable commodities between
departments, or upon the sale of commodities or expendable commodities to an eligible organization, the division shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

(d) The division may sell expendable, obsolete, or unused motor vehicles owned by the division to an eligible organization, other than volunteer fire departments. In addition, the division may sell expendable, obsolete, or unused motor vehicles owned by the division with a gross weight in excess of 4,000 pounds to an eligible volunteer fire department. The division, with due consideration given to current market prices, shall set the price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision: Provided, That the sale price of any motor vehicle sold to an eligible organization may not be less than the “average loan” value, as published in the most recent available eastern edition of the National Automobile Dealers Association (NADA) Official Used Car Guide, if the value is available, unless the fair market value of the vehicle is less than the NADA “average loan” value, in which case the vehicle may be sold for less than the “average loan” value. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the division who shall consider the mileage of the vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no fair market value is available, the division shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of the eligible organization, for whom the motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor vehicle to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. The ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of the purchase or transfer. Resale or transfer of ownership of the motor
vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

(e) The division shall report to the Legislative Auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by the eligible organization that received the commodities, and to whom each commodity was sold.

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury in the special revenue account created in subsection (a) of this section.

(g)(1) For purposes of this section, “cannibalization” means the removal of parts from one commodity to use in the creation or repair of another commodity.

(2)(A) If the division intends to cannibalize an asset, the division shall document: (i) The commodity identification number; (ii) the commodity’s acquisition date; (iii) the commodity’s acquisition cost; (iv) a description of the commodity; (v) whether the commodity is operable and, if so, how well it operates; (vi) how the division will dispose of the remaining parts of the commodity; and (vii) who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

(B) If the division has immediate plans to use the cannibalized parts, the division shall document for the commodity or commodities that will receive the cannibalized part or parts: (i) The commodity identification number; (ii) the commodity’s acquisition date; (iii) the commodity’s acquisition cost; (iv) a description of the commodity; (v) whether the commodity is operable; (vi) whether the part restores the commodity to an operable condition; and (vii) the cost of the parts and labor to restore the commodity to an operable condition without cannibalization.
(C) If the division intends to retain the cannibalized parts for future use, it shall document that said parts have been retained for future use.

(D) The division shall develop procedures for the disposal of the residual components of cannibalized property.

(3) Whenever the division disposes of a commodity in a landfill, or by other lawful means of waste disposal, the division shall notate this on the inventory for the commodity and shall document the reasons why it was disposed of in such manner.

CHAPTER 56

(Com. Sub. for S. B. 373 - By Senators Weld, Clements and Maroney)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §15A-4-11 of the Code of West Virginia, 1931, as amended, relating generally to the financial responsibility of inmates; and authorizing the Commissioner of Corrections and Rehabilitation to deduct money from court-ordered obligations, civil judgments, and settlements, including child support, restitution, spousal support, and court costs prior to depositing such moneys in the inmate’s account.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-11. Financial responsibility program for inmates.

(a) The Legislature finds that:
(1) There is an urgent need for vigorous enforcement of child support, restitution, and other court-ordered obligations;

(2) The duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care should not be avoided because of where the inmate resides;

(3) A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and

(4) Each sentenced inmate should be encouraged to meet his or her legitimate court-ordered financial obligations.

(b) As part of the initial classification process into a correctional facility, the division shall assist each inmate in developing a financial plan for meeting the inmate’s child support obligations, if any exist. At subsequent program reviews, the division shall consider the inmate’s efforts to fulfill those obligations as indicative of that individual’s acceptance and demonstrated level of responsibility.

(c)(1) The superintendent shall deduct from the earnings of each inmate all legitimate court-ordered financial obligations. The superintendent shall also deduct child support payments from the earnings of each inmate who has a court-ordered financial obligation. The commissioner shall develop a policy that outlines the formula for the distribution of the offender’s income and the formula shall include a percentage deduction, not to exceed 50 percent in the aggregate, for any court-ordered victim restitution, court fees, and child support obligations owed under a support order, including an administrative fee, consistent with the provisions of §48-14-406(c) of this code, to support the division’s administration of this financial service;
(2) If the inmate worker’s income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations, and garnishment;

(3) The division shall develop the necessary administrative structure to record inmates’ wages and keep records of the amount inmates pay for child support; and

(4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement of the Department of Health and Human Resources from taking collection action against an inmate’s moneys, assets, or property.

(d) If an inmate is awarded a civil judgment, or settles a civil matter, which awards him or her monetary damages, the court in which those damages are awarded or settled shall enter an order which deducts attorney fees and litigation costs owed the inmate’s legal counsel and deducts all known outstanding child support, restitution, spousal support, and court costs from the award to the inmate, and satisfies those obligations, prior to releasing any funds to the inmate.

(e) Notwithstanding the failure of a court to act in accordance with subsection (d) of this section, the division may honor any outstanding court-ordered obligations of which it is aware, to satisfy all known orders of child support, restitution, spousal support, or court costs and shall deduct from any civil judgment or civil settlement such amounts necessary to pay such obligations of the inmate, if any, arising from orders of child support, restitution, spousal support, or court costs prior to depositing funds from such civil judgment or civil settlement in the inmate’s account. The provisions of this subsection shall apply to civil actions filed after July 1, 2019.

(f) The accumulation of the total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or as appropriate, through the West
Virginia Municipal Bond Commission, in short-term bonds or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the State Treasurer. The earnings from investments so made shall be reported to the principal officer of each institution, from time to time, as earned, and shall be credited to the respective accounts of the institutions by the West Virginia Municipal Bond Commission. When the earnings are transferred to the respective institutions, they shall be credited by the superintendent to the credit of, and for the benefit of, the inmate, or resident, benefit fund.

CHAPTER 57

(Com. Sub. for S. B. 601 - By Senator Trump)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-4-17a, relating to mandatory supervision of adult inmates generally; authorizing the Commissioner of the Division of Corrections and Rehabilitation to develop mandatory supervised release plans; authorizing the early release of inmates subject to the conditions of a mandatory supervised release plan; providing for return of inmates to a correctional facility for violations of the conditions of mandatory supervised release plans; providing that inmates on mandatory supervised release are considered to be on parole; clarifying that mandatory supervised release plan is not a commutation of sentence or any other form of clemency; and providing that mandatory supervised release concludes upon completion of the minimum expiration of sentence.
Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-17a. Division of Corrections and Rehabilitation
mandatory supervised release plan.

The commissioner may develop a mandatory supervised
release plan for an inmate serving a sentence for a felony
offense not referenced in §15A-4-17(k) of this code who has
not been granted discretionary parole 180 days prior to the
inmate’s minimum expiration of sentence, which may
include electronic monitoring as a condition of release. The
inmate may be released and subject to a period of mandatory
supervision of 180 days when he or she is 180 days from his
or her minimum expiration of sentence.

(1) An inmate on mandatory supervised release pursuant
to this subsection may be returned by the commissioner to a
correctional facility for violation of the conditions of
supervision and may not again be eligible for mandatory
supervised release during the same period of incarceration.

(2) An inmate on mandatory supervised release shall be
considered released on parole.

(3) Mandatory supervised release is not a commutation
of sentence or any other form of clemency.

(4) Subject to subdivision (1) of this subsection, the
period of mandatory supervised release shall conclude upon
completion of the minimum expiration of sentence.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-1c, relating to authorizing the Division of Corrections and Rehabilitation to issue a temporary identification card to an inmate prior to release from custody; providing when temporary identification cards must be issued and for how long such cards are valid; providing that temporary identification cards have the same force and effect as standard identification cards issued by the Division of Motor Vehicles; requiring the Division of Motor Vehicles to accept temporary identification cards as proof of identity, age, and residency; requiring the Division of Motor Vehicles to contact the Division of Corrections and Rehabilitation to verify the social security number of a person presenting a temporary identification card in certain circumstances and to accept verification as documentation of social security number; requiring the Division of Corrections and Rehabilitation to develop a policy and obtain necessary authorizations for sharing social security numbers of released inmates with the Division of Motor Vehicles for limited purposes; providing limitations on inmate eligibility for temporary identification cards; clarifying that the new section neither permits nor requires issuance of temporary identification cards for federal use, in violation of any standards promulgated pursuant to the federal Real ID Act of 2005; and requiring the Division of Corrections and Rehabilitation to make efforts, during the six months preceding an inmate’s release, to assist an inmate in obtaining certain personal identification documents.
Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-1c. Temporary identification card for released inmates.

(a) The West Virginia Division of Corrections and Rehabilitation is authorized to issue a temporary identification card to an eligible inmate, no more than seven days prior to the inmate’s release from the Division’s custody. An identification card issued pursuant to this section shall be valid for 90 days after the date of issuance.

(b) A valid identification card issued pursuant to this section shall have the same force and effect as a standard identification card issued by the Division of Motor Vehicles pursuant to §17B-2-1(f) of this code.

(c)(1) Notwithstanding any other provision of this code, the Division of Motor Vehicles shall accept a valid identification card issued pursuant to this section as sufficient proof of identity, age, and residency of a person applying for an identification card or driver’s license pursuant to §17B-2-1 of this code.

(2) If the Division of Motor Vehicles is unable to verify the person’s social security number by another means, the Division of Motor Vehicles shall contact the Division of Corrections and Rehabilitation to verify the social security number provided by such person. The Division of Motor Vehicles shall accept verification by the Division of Corrections and Rehabilitation as sufficient documentation of the person’s social security number for the purpose of issuing such person an identification card or driver’s license pursuant to §17B-2-1 of this code.

(3) The Division of Corrections and Rehabilitation, in collaboration with the Division of Motor Vehicles, shall develop a policy to permit the sharing of released inmates’ social security numbers for the limited purposes of this section, and shall obtain any necessary written authorization.
from an inmate prior to the inmate’s release from the  
Division of Corrections and Rehabilitation’s custody.  

d) An inmate is not eligible to receive an identification  
card pursuant to this section if the inmate is in possession of  
a valid West Virginia identification card or driver’s license,  
which expires more than seven days after the inmate’s date  
of release from the Division of Corrections and  
Rehabilitation’s custody, or if the inmate is not a citizen of  
the United States.  

e) Nothing in this section shall be construed to permit  
or require issuance of an identification card or driver’s  
license for federal use, in violation of the standards  
promulgated pursuant to the REAL ID Act of 2005, 49  
U.S.C. § 30301 et seq.  

(f) During the six months preceding an inmate’s release  
date from the Division of Corrections and Rehabilitation’s  
custody, the division shall make efforts to assist the inmate  
to obtain a certified copy of the inmate’s birth certificate, a  
Social Security card, and a state-issued driver’s license or  
identification card.  

CHAPTER 59  

(H. B. 2462 - By Delegates Hollen, Canestraro, D.  
Kelly, Foster, Fast, Harshbarger and Mandt)  

[Passed February 11, 2019; in effect ninety days from passage.]  
[Approved by the Governor on February 19, 2019.]
issued firearms to correctional employees; establishing that authorized correctional employees may carry division-issued firearms during performance of official duties and when traveling to and from work; establishing the commissioner’s firearm training program must be equivalent to the firearms training requirements for deputy sheriffs; requiring that the correctional employee must successfully complete an annual designated firearms course as established by the law enforcement professional standards program to maintain the certificate; and providing the certificate bearing the commissioner’s signature shall be in a form prescribed by the commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-10. Law-enforcement powers of employees; authority to carry firearms.

(a) Other than as outlined in this section, a correctional officer employed by the division is not a law-enforcement officer as that term is defined in §30-29-1 of this code.

(b) The commissioner is a law-enforcement official, and has the authority to use, and permit and allow or disallow his or her designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: Provided, That the usage is subject to the supervision of the commissioner and is directly connected with and required by the nature and in the performance of the official’s or designated employee’s duties and responsibilities.

(c) All employees of the division are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the division.
(d) Persons employed by the Division of Corrections and Rehabilitation as correctional officers are authorized and empowered to make arrests of persons already charged with a violation of law who surrender themselves to the correctional officer, to arrest persons already in the custody of the division for violations of law occurring in the officer’s presence, to detain persons for violations of state law committed on the property of any facility under the jurisdiction of the commissioner, and to conduct investigations, pursue, and apprehend escapees from the custody of a facility of the division.

(e) The commissioner may designate correctional employees as correctional peace officers who have the authority:

(1) To detain persons for violations of state law committed on the property of any state correctional institution;

(2) To conduct investigations regarding criminal activity occurring within a correctional facility;

(3) To execute criminal process or other process in furtherance of these duties; and

(4) To apply for, obtain, and execute search warrants necessary for the completion of his or her duties and responsibilities.

(f) The Corrections Special Operations Team is continued and consists of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It has limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees,
absconders, and in all matters arising on the grounds of a facility under the care and control of the commissioner:

Provided, That at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

(g) Notwithstanding any provision of this code to the contrary, the commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division’s training program for firearms certification to carry a firearm in the performance of his or her official duties. The training program shall be approved by the commissioner and be equivalent to the training requirements applicable to deputy sheriffs for the use and handling of firearms. Any correctional employee authorized to do so by the commissioner may carry division-issued firearms while in the performance of his or her official duties, which shall include travel to and from work sites. To maintain certification, a correctional employee must successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by the law enforcement professional standards program. The certificate shall be on a form prescribed by the commissioner and shall bear his or her official signature.
AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to municipal home rule; making legislative findings; establishing the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program; providing for continuation of plans and amendments approved during Municipal Home Rule Pilot Program; providing that any ordinance, act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed; expanding eligibility to participate in home rule to additional municipalities; establishing annual assessment for participants in Municipal Home Rule Program; establishing penalty for failing to timely pay annual assessment; creating special revenue account for Municipal Home Rule Board; authorizing certain expenditures from special revenue fund; providing suspension of annual assessment when certain conditions are met; clarifying the authority of the Municipal Home Rule Board; requiring Municipal Home Rule Board to reject any application or amendment that does not reasonably demonstrate municipality’s ability to manage related costs or liabilities; requiring publication of administrative rules of Municipal Home Rule Board on its website and made available to the public in print upon request; clarifying procedures related to submitting amendment to approved plan; requiring certain notice prior to proposing or amending a plan; requiring public hearing and notice of hearing prior to municipality proposing a plan or amendment; amending certain
prohibitions on the powers and duties of municipalities under home rule; providing more specific direction regarding the requirements for municipalities participating in the Municipal Home Rule Program that reinstate or raise business and occupation taxes and its impact on municipal sales tax in certain circumstances; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws governing professional licensing or certification of employees; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws governing enforcement of building codes or fire codes; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to federal laws, regulations, or standards that would affect state’s required compliance or jeopardize federal funding; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws or rules governing procurement of architectural and engineering services with certain exceptions; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to chapter 17C of the Code of West Virginia, 1931, as amended; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing communication technologies or telecommunication carriers; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that governs the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or accessories thereof; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that imposes duties on another governmental entity and providing certain exceptions to that prohibition; prohibiting municipalities from prohibiting or effectively limiting the rental of a property
or regulating the duration, frequency, or location of such rental and providing certain exceptions to that prohibition and limitation; modifying reporting requirements; eliminating automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019; and making technical corrections throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule Program.

1 (a) — The Legislature finds and declares that:

2 (1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

3 (2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

4 (3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;

5 (4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

6 (5) Municipalities are sometimes restrained by state statutes, policies, and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient, and timely manner;

7 (6) Establishing the Municipal Home Rule Pilot Program as a permanent program is in the public interest; and
(7) Increasing the powers and duties of the Municipal Home Rule Board, subject to the limitations set forth herein, will enhance the Municipal Home Rule Program.

(b) The Municipal Home Rule Pilot Program is established as a permanent program and shall be identified as the Municipal Home Rule Program. Any plan or amendment to a plan approved by the board during the period of the Municipal Home Rule Pilot Program is continued. Any ordinance, act, resolution, rule, or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect unless and until repealed: Provided, That municipalities that are participants in the Municipal Home Rule Program shall update their ordinances, acts, resolutions, rules, and regulations to comply with any additions or modifications to subsection (i), subsection (j), or subsection (k) of this section.

(c) (1) Commencing July 1, 2019, any Class I, Class II, or Class III municipality that is current in payment of all state fees may apply to participate in the Municipal Home Rule Program pursuant to the provisions of this section. Also, commencing July 1, 2019, up to four applications per year from Class IV municipalities may be approved by the board for participation in the Municipal Home Rule Program pursuant to the provisions of this section, provided the Class IV municipality is current in payment of all state fees.

(2) The municipalities participating in the Municipal Home Rule Pilot Program on the effective date of the amendment and reenactment of this section are authorized to continue in the Municipal Home Rule Program, subject to the requirements of this section, and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.
(3) On July 1, 2019, all municipalities currently participating in the Municipal Home Rule Pilot Program shall pay an annual assessment of $2,000 for the operation and administration of the Home Rule Board. On July 1 of each year thereafter, all municipalities participating in the Municipal Home Rule Program as of that date shall pay the annual assessment. Any participating municipality that fails to timely remit its assessment when due may be assessed a penalty of an additional $2,000 by the board.

(4) There is created in the office of the State Treasurer a special revenue account fund to be known as the Home Rule Board Operations Fund. The assessments required by the provisions of subdivision (3) of this subsection shall be deposited into the fund, and expenditures from the fund shall be made in accordance with appropriation of the Legislature under the provisions of §12-3-1 et seq. of this code, and in compliance with the provisions of §11B-2-1 et seq. of this code: Provided, That legislative appropriation is not required during fiscal year 2019.

(5) Any balance in the fund created under subdivision (4) of this subsection at the end of a fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account for uses consistent with the provisions of this section.

(6) All costs and expenses lawfully incurred by the board may be paid from the fund created under subdivision (4) of this subsection.

(7) Notwithstanding any provision of this section to the contrary, if at the end of a fiscal year the unencumbered balance of the fund created in subdivision (4) of this subsection is $200,000 or more, then annual assessments shall be suspended until the board determines that the unencumbered balance in the fund is insufficient to meet operational expenses. The board shall notify all participating municipalities of the suspension of the annual assessment prior to the end of the fiscal year and provide an
 estimate of when payment of annual assessments will resume.

(d) The Municipal Home Rule Board is continued. The Municipal Home Rule Board shall consist of the following five voting members:

(1) The Governor, or a designee, who shall serve as chair;

(2) The Executive Director of the West Virginia Development Office, or a designee;

(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;

(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

(5) One member representing the West Virginia Chapter of the American Planning Association, appointed by the Governor with the advice and consent of the Senate.

The Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall serve as ex officio nonvoting members of the board.

(e) The Municipal Home Rule Board shall:

(1) Review, evaluate, make recommendations, and approve or reject, for any lawful reason, by a majority vote of the board, each aspect of the written plan, or the written plan in its entirety, submitted by a municipality;

(2) By a majority vote of the board, select, based on the municipality’s written plan, new Class I, Class II, Class III, and/or Class IV municipalities to participate in the Municipal Home Rule Program;
(3) Review, evaluate, make recommendations, and approve or reject, for any lawful reason, by a majority vote of the board, the amendments to the existing approved written plans submitted by municipalities: Provided, That any new application or amendment that does not reasonably demonstrate the municipality’s ability to manage its associated costs or liabilities shall be rejected;

(4) Consult with any agency affected by the written plans or the amendments to the existing approved written plans; and

(5) Perform any other powers or duties necessary to effectuate the provisions of this section: Provided, That any administrative rules established by the board for the operation of the Municipal Home Rule Program shall be published on the Municipal Home Rule Board’s website, and made available to the public in print upon request.

(f) Any Class I, Class II, Class III, or Class IV municipality desiring to participate in the Municipal Home Rule Program, or any municipality desiring to amend its existing approved written plan, shall submit a written plan to the board stating in detail the following:

(1) The specific laws, acts, resolutions, policies, rules, or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective, and timely manner;

(2) The problems created by those laws, acts, resolutions, policies, rules, or regulations;

(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules, and regulations: Provided, That the specific municipal ordinance instituting the solution does not have to be included in the written plan; and
(4) A written opinion, by an attorney licensed to practice in the State of West Virginia, stating that the proposed written plan does not violate the provisions of this section.

(g) Prior to submitting its written plan, or an amendment to an existing approved written plan, to the board, the municipality shall:

(1) Hold a public hearing on the written plan or the amendment to the existing approved written plan;

(2) Provide notice of the public hearing at least 30 days prior to the public hearing by a Class II legal advertisement: Provided, That on or before the first day of publication, the municipality shall send a copy of the notice by certified mail to the Municipal Home Rule Board and the cabinet secretary of every state department;

(3) Make a copy of the written plan or amendment available for public inspection at least 30 days prior to the public hearing; and

(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan or amendment to the Municipal Home Rule Board: Provided, That the proposed ordinance has been read two times, as required by §8-11-4 of this code.

(h) By a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote new Class I, Class II, Class III, and/or Class IV municipalities to participate in the Municipal Home Rule Program.

(i) The municipalities participating in the Municipal Home Rule Program may not pass an ordinance, act, resolution, rule, or regulation, under the provisions of this section, that is contrary to the following:

(1) Environmental law;
(2) Laws governing bidding on government construction and other contracts;

(3) The Freedom of Information Act;

(4) The Open Governmental Proceedings Act;

(5) Laws governing wages for construction of public improvements;

(6) The provisions of this section;

(7) The provisions of §8-12-5a of this code;

(8) The municipality’s written plan;

(9) The Constitution of the United States or the Constitution of the State of West Virginia;

(10) Federal law, including those governing crimes and punishment;

(11) Chapters 60A, 61, and 62 of this code or any other provisions of this code governing state crimes and punishment;

(12) Laws governing pensions or retirement plans;

(13) Laws governing annexation;

(14) Laws governing taxation: Provided, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: Provided, however, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program, it shall reduce or eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program in an amount comparable to the revenue estimated to be generated by the reinstated tax:
Provided further, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce, and collect the tax required by the provisions of §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: And provided further, That the tax does not apply to the sale of motor fuel or motor vehicles;

(15) Laws governing tax increment financing;

(16) Laws governing extraction of natural resources;

(17) Marriage and divorce laws;

(18) Laws governing professional licensing or certification, including the administration and oversight of those laws, by state agencies to the extent required by law;

(19) Laws, rules, or regulations governing the enforcement of state building or fire codes;

(20) Federal laws, regulations, or standards that would affect the state’s required compliance or jeopardize federal funding;

(21) Laws or rules governing procurement of architectural and engineering services: Provided, That notwithstanding any other provision of this section to the contrary, the change made in this subdivision applies prospectively and any ordinance enacted by the participating municipalities prior to the effective date of the amendments to this section during the 2019 regular legislative session and pursuant to the Municipal Home Rule Pilot Program remains in effect.

(22) The provisions of chapter 17C of this code; or

(23) Laws, rules, or regulations governing communication technologies or telecommunications carriers, as the term “telecommunications carrier” is defined by the Federal Communications Commission in 47 U.S.C. §153 or as
determined by the Public Service Commission of West Virginia.

(24) Laws governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying firearms, ammunition, or accessories thereof.

(j) The municipalities participating in the Municipal Home Rule Program may not pass an ordinance, act, resolution, rule, or regulation under the provisions of this section that:

(1) Affects persons or property outside the boundaries of the municipality: Provided, That this prohibition under the Municipal Home Rule Program does not limit a municipality’s powers outside its boundary lines to the extent permitted under other provisions of this section, other sections of this chapter, other chapters of this code, or court decisions;

(2) Enacts an occupation tax, fee, or assessment payable by a nonresident of a municipality; or

(3) Imposes duties on another governmental entity, unless the performance of the duties is part of a legally executed agreement between the municipality and the other governmental entity, or is otherwise permitted by state law;

(k) Municipalities may not prohibit or effectively limit the rental of a property, in whole or in part, or regulate the duration, frequency, or location of such rental, in whole or in part. A municipality may regulate activities that arise when a property is used as a rental: Provided, That such regulation applies uniformly to all properties, without regard to whether such properties are used as a rental: Provided, however, That nothing in this subdivision may be construed to prohibit a municipality from imposing a hotel occupancy tax as prescribed in §7-18-1 et seq. of this code.
(l) A municipality participating in the Municipal Home Rule Program may amend its written plan at any time subject to the requirements of this section.

(m) A municipality participating in the Municipal Home Rule Program may amend any ordinance, act, resolution, rule, or regulation enacted pursuant to the municipality’s approved written plan at any time as long as the amendment is consistent with the municipality’s approved written plan, as modified by any amendments adopted pursuant to this section, complies with the provisions of this section, and the municipality complies with all applicable state law procedures for enacting municipal legislation.

(n) On or before December 1 of each year, each participating municipality shall give a written progress report to the Municipal Home Rule Board, and on or before January 1 of each year, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

(o) Notwithstanding any other provision of this code to the contrary, a distributee under the provisions of this section may not seek from the Tax Division of the Department of Revenue a refund of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek a change in past amounts distributed, or any other retrospective adjustment relating to any amount distributed, to the extent that the moneys in question have been distributed by the Tax Division to another distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous, misdirected, or otherwise inaccurate or incorrect. For purposes of this section, the term “distributee” means any municipality that has enacted a sales and use tax under this section or as otherwise permitted by law that receives or is authorized to receive a specific distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue pursuant to this section.
CHAPTER 61

(S. B. 28 - By Senators Blair, Boso and Clements)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §7-18-14 of the Code of West Virginia, 1931, as amended, relating generally to the purposes for which expenditures may be made by county commissions and municipalities from a certain portion of the net proceeds of hotel occupancy taxes; removing the limitation on the amount that may be expended for medical care and emergency services; and allowing a new purpose for those expenditures for the support and operation of economic development activities, including site development, facilities, and infrastructure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) Application of proceeds. — The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of such municipality or county commission and, after appropriation thereof, shall be expended only as provided in this section.

7 (b) Required expenditures. — At least 50 percent of the net revenue receivable during the fiscal year by a county or a municipality pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:
(1) **Municipalities.** — If a convention and visitor’s bureau is located within the municipality, county, or region, the governing body of such municipality shall appropriate the percentage required by this subsection to that bureau. If a convention and visitor’s bureau is not located within such municipality, county or region, then the percentage appropriation required by this subsection shall be appropriated as follows:

- **(A)** Any hotel located within such municipality, county, or region may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications, and similar expenses. The portion of such tax allocable to such hotel shall not exceed 75 percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: **Provided,** That prior to appropriating any moneys to such hotel, such municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

- **(B)** If there is more than one convention and visitor’s bureau located within a municipality, county, or region, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.

- **(C)** The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which the municipality is located.

(2) **Counties.** — If a convention and visitor’s bureau is located within a county or region, the county commission shall appropriate the percentage required by this subsection to that convention and visitor’s bureau. If a convention and visitor’s bureau is not located within such county or region,
then the percentage appropriation required by this
subsection shall be appropriated as follows:

(A) Any hotel located within such county or region may
apply to such county for an appropriation to such hotel of a
portion of the tax authorized by this article and collected by
such hotel and remitted to such county for uses directly
related to the promotion of tourism and travel, including
advertising, salaries, travel, office expenses, publications,
and similar expenses. The portion of such tax allocable to
such hotel shall not exceed 75 percent of that portion of such
tax collected and remitted by such hotel which is required
to be expended pursuant to this subsection: Provided, That
prior to appropriating any moneys to such hotel, such
county shall require the submission of, and give approval to,
a budget setting forth the proposed uses of such moneys.

(B) If there is more than one convention and visitor’s
bureau located within a county or region, the county
commission may allocate the tax authorized by this article
to one or more of such bureaus in such portion as the county
commission in its sole discretion determines.

(C) The balance of net revenue required to be expended
by this subsection shall be appropriated to the regional
travel council serving the area in which the county is
located.

(3) Legislative finding. — The Legislature hereby finds
and declares that in order to attract new business and
industry to this state and to retain existing business and
industry all to provide the citizens of the state with
economic security and to advance the business prosperity
and economic welfare of this state, it is necessary to enhance
recreational and tourism opportunities. Therefore, in order
to promote recreation and tourism, the Legislature finds that
public financial support should be provided for
constructing, equipping, improving, and maintaining
projects, agencies, and facilities which promote recreation
and tourism. The Legislature also finds that the support of
convention and visitor’s bureaus, hotels, and regional travel councils is a public purpose for which funds may be expended. Local convention and visitor’s bureaus, hotels, and regional travel councils receiving funds under this subsection may expend such funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by this subsection.

(c) Permissible expenditures. — After making the appropriation required by §7-18-14(b) of this code, the remaining portion of the net revenues receivable during the fiscal year by such county or municipality, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

1. The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair, and operation of publicly owned convention facilities, including, but not limited to, arenas, auditoriums, civic centers, and convention centers;

2. The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;

3. The promotion of conventions;

4. The construction, operation, or maintenance of public parks, tourist information centers, and recreation facilities, including land acquisition;

5. The promotion of the arts;

6. Historic sites;

7. Beautification projects;
(8) Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations in this state;

(9) Medical care and emergency services in any county where:

   (A) There is an urgent necessity to preserve the delivery of acute medical care and emergency services;

   (B) There is an increase in need for acute medical care and emergency services directly related to tourism;

   (C) Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care and emergency services;

   (D) There is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care and emergency services;

   (E) There is an inadequate economic base directly related to low population in the county, specifically, a population of less than 10,000 persons according to the most recent decennial census taken under the authority of the United States;

   (F) There is no more than one hospital within the county; and

   (G) The county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist;

(10) Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the Hatfield-McCoy Regional Recreational Authority; or

(11) Support and operation of economic development activities, including site development, facilities and infrastructure in an amount not to exceed $200,000.
(d) Definitions. — For purposes of this section, the following terms are defined:

1. **Convention and visitor’s bureau and visitor’s and convention bureau.** — “Convention and visitor’s bureau” and “visitor’s and convention bureau” are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences, and visitors to the municipality, county, or region in which such convention and visitor’s bureau or visitor’s and convention bureau is located or engaged in business within.

2. **Convention center.** — “Convention center” means a convention facility owned by the state, a county, a municipality, or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service, and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

3. **Fiscal year.** — “Fiscal year” means the year beginning July 1 and ending June 30 of the next calendar year.

4. **Net proceeds.** — “Net proceeds” means the gross amount of tax collections less the amount of tax lawfully refunded.

5. **Promotion of the arts.** — “Promotion of the arts” means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting, and the creative arts through shows, exhibits, festivals, concerts, musicals, and plays.

6. **Recreational facilities.** — “Recreational facilities” means and includes any public park, parkway, playground,
public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts, and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.

(7) Region. — “Region” means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor’s bureau to promote those counties.

(8) Regional travel council. — “Regional travel council” means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences, and visitors to the region of this state served by the regional travel council.

(9) Historic site. — “Historic site” means any site listed on the United States National Register of Historic Places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county, or a nonprofit historical association and are open, from time to time, to accommodate visitors.

(e) Any member of a governing body who willingly and knowingly votes to or causes to be expended moneys generated by the provisions of this section for purposes other than specifically set forth in this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.
AN ACT to amend and reenact §8-22-27a of the Code of West Virginia, 1931, as amended, relating to the corrections of overpayments made to retirants or beneficiaries of retirants; authorizing municipalities to continue certain overpayments; and authorizing a municipality to appoint additional members to a firemen’s or a policemen’s pension and relief fund board.

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 SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-27a. Correction of errors; underpayments; overpayments.

(a) General rule. — Upon learning of errors, the Municipal Policemen’s Pension and Relief Fund Board of Trustees or the Municipal Firemen’s Pension and Relief Fund Board of Trustees shall correct errors in the plan in a timely manner whether the individual, municipality, or board of trustees was at fault for the error with the intent of placing the affected individual, municipality, and pension board of trustees in the position each would have been in had the error not occurred. Should the municipal policemen’s or firemen’s pension and relief fund board of
trustees fail to correct discovered errors, the Municipal
Pensions Oversight Board shall order the pension fund
board of trustees to correct such errors. In the event the
Municipal Pensions Oversight Board issues an order
pursuant to this section, the governing body of the city may
by resolution temporarily appoint up to four additional
members to the board of trustees for the purpose of
implementing the provisions of the order. The additional
board members shall serve until all corrective actions
ordered by the Municipal Pensions Oversight Board are
completed or until the municipality authorizes continued
erroneous payments to retirants or beneficiaries of a retirant
as authorized by subsection (d) of this section. Any order
issued by the Municipal Pensions Oversight Board shall be
enforceable by an action at law.

(b) Underpayments to the plan. — Any error resulting
in an underpayment to the plan may be corrected by the
member or retirant remitting the required employee
contribution or underpayment and the municipality
remitting the required municipality contribution or
underpayment. The rate of interest applicable to employer
error payments in a municipal policemen’s or municipal
firemen’s pension and relief fund shall be the actuarial
interest rate assumption as approved by the Municipal
Pensions Oversight Board for completing the actuarial
valuation for the plan year immediately preceding the first
day of the plan year in which the employer error payment is
made, compounded per annum. Any accumulating interest
owed on the employee and employer contributions or
underpayments resulting from an employer error shall be
the responsibility of the employer. The employer may remit
total payment and the employee reimburse the employer
through payroll deduction over a period equivalent to the
time period during which the employer error occurred. If the
correction of an error involving an underpayment to the plan
will result in the plan correcting an erroneous underpayment
from the plan, the correction of the underpayment from the
plan shall be made only after the board of trustees receives
full payment of all required employee and employer
contributions or underpayments, including interest.

(c) Overpayments to the plan by an employee. — When
mistaken or excess employee contributions or
overpayments have been made to the plan, the municipal
policemen’s or municipal firemen’s pension and relief fund
board of trustees shall have sole authority for determining
the means of return, offset or credit to or for the benefit of
the individual making the mistaken or excess employee
contribution of the amounts, and may use any means
authorized or permitted under the provisions of Section
401(a), et seq. of the Internal Revenue Code and guidance
issued thereunder applicable to governmental plans.
Alternatively, in its full and complete discretion, the
municipal policemen’s or municipal firemen’s pension and
relief fund board of trustees may require the municipality
employing the individual to pay the individual the amounts
as wages, with the board of trustees crediting the employer
with a corresponding amount to offset against its future
contributions to the plan. If the municipality has no future
liability for municipality contributions to the plan, the board
of trustees shall refund said amount directly to the
municipality: Provided, That the wages paid to the
individual shall not be considered compensation for any
purposes of this article. Earnings or interest shall not be
returned, offset, or credited under any of the means used by
the board of trustees for returning employee overpayments.

(d) Overpayments from the plan. — If any error results
in any member, retirant, beneficiary, entity, or other
individual receiving from the plan more than he or she
would have been entitled to receive had the error not
occurred, the board of trustees, after learning of the error,
shall correct the error in a timely manner. Unless otherwise
authorized by the governing body of the city in which the
fund was established as provided herein, if correction of the
error occurs after annuity payments to a retirant or
beneficiary have commenced, the board of trustees shall
prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity, or other person who received the overpayment from the plan shall repay the amount of any overpayment to the municipal policemen’s pension fund or municipal firemen’s pension fund in any manner permitted by the board of trustees of that fund. The governing body of the city in which the overpaying municipal fund is established may, by majority vote, authorize continued overpayment of retirement benefits for any member, retirant, beneficiary, entity, or individual who retired prior to the effective date of this section as enacted during the regular legislative session of 2017: Provided, That where the governing body of the city authorizes continued overpayment, it shall also authorize continued payment into the fund in an amount equal to that which it would be responsible to pay under the applicable actuarial method used by the city without reduction to any retirement benefit. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(e) Underpayments from the plan. — If any error results in any member, retirant, beneficiary, entity, or other individual receiving from the plan less than he or she would have been entitled to receive had the error not occurred, the board of trustees, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board of trustees shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board of trustees shall pay the amount of such underpayment to the member, retirant, beneficiary, or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the municipal policemen’s pension fund or municipal firemen’s pension fund pursuant to this subsection.
CHAPTER 63

(S. B. 617 - By Senators Azinger, Hamilton, Plymale and Ihlenfeld)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §8-22-19 of the Code of West Virginia, 1931, as amended, relating to method of payment of municipal contributions to municipality’s pension trust funds.

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 SYSTEM, SEWERAGE SYSTEM, OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund.

(a)(1) In order for a municipal policemen’s or firemen’s pension and relief fund to receive the allocable portion of moneys from the Municipal Pensions Security Fund created in §8-22-18b of this code, the governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies and include within the maximum levy or levies permitted by law and, if necessary, in excess of any charter provision, a tax at such rate as will, after crediting: (A) The amount of the contributions received during the year from the members of the respective paid police department or paid fire department; and (B) the allocable portion of the funds from the Municipal Pensions Security Fund created in §8-22-18b of this code, provide
funds equal to the amount necessary to meet the minimum standards for actuarial soundness as provided in §8-22-20 of this code. The amount shall be irrevocably contributed, accumulated, and invested as fund assets as described in §8-22-21 and §8-22-22 of this code. One twelfth of each municipality’s annual contributions shall be deposited with the municipality’s pension trust funds as fund assets on at least a monthly basis and any revenues received from any source by a municipality which are specifically collected for the purpose of allocation for deposit into the policemen’s pension and relief fund or firemen’s pension and relief fund shall be so deposited within five days of receipt by the municipality. A municipality may prepay its monthly required contributions in increments greater than one-twelfth. Heretofore surplus reserves accumulated before the effective date of this section shall be irrevocably contributed, aggregated, and invested as fund assets described in §8-22-21 and §8-22-22 of this code. Any actuarial deficiency arising under this section and §8-22-20 of this code shall not be the obligation of the State of West Virginia.

(2) The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies and, to that extent, beyond the limit of levy imposed by the charter of the municipality; and the levies shall supersede and if necessary exclude levies for other purposes, where other purposes have not already attained priority, and within the limitations on taxes or tax levies imposed by the constitution and laws.

(b) The public corporations are authorized to take by gift, grant, devise, or bequest any money or real or personal property on such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by the trustees.

(c) In addition to all other sums provided for pensions in this section, it is the duty of every municipality in which
any fund or funds have been or shall be established to assess
and collect from each member of the paid police department
or paid fire department or both each month, the sum of seven
percent of the actual salary or compensation of such
member; and the amount so collected shall become a regular
part of the policemen’s pension and relief fund, if collected
from a policeman, and of the firemen’s pension and relief
fund, if collected from a fireman: Provided, That for
members of the funds who are police officers or firefighters
newly hired on or after January 1, 2010, the municipality
shall assess and collect nine and one-half percent of the
actual salary or compensation. Only those funds for which
the board of trustees has collected and paid the contributions
as herein provided and meeting minimum standards for
actuarial soundness shall be eligible to receive moneys from
the additional fire and casualty insurance premium tax as
provided in §33-3-14d of this code: Provided, however,
That the board of trustees for each pension and relief fund
may assess and collect from each member of the paid police
department or paid fire department or both each month not
more than an additional two and one-half percent of the
actual salary or compensation of each member, but not to
exceed nine and one-half percent total contribution:
Provided further, That if any board of trustees decides to
assess and collect any additional amount pursuant to this
subdivision above the member contribution required by this
section, then that board of trustees may not reduce the
additional amount until the respective pension and relief
fund no longer has any actuarial deficiency: And provided
further, That if any board of trustees decides to assess and
collect any additional amount, any board of trustees
decision and any additional amount is not the liability of the
State of West Virginia. Member contributions shall be
deposited in the pension and relief fund within five days of
being collected.

(d)(1) For the fiscal year beginning on July 1, 2010, and
subject to provisions of §8-22-18b and §33-3-14d of this
code and for each fiscal year thereafter, the Municipal
Pensions Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security Fund until such time as the treasurer of the municipality applies for the allocable portion and certifies in writing to Municipal Pensions Oversight Board that:

(A) The municipality has irrevocably contributed the amount required under this section and §8-22-20 of this code to the pension and relief fund for the required period; and

(B) The board of trustees of the pension and relief fund has made a report to the governing body of the municipality and to the oversight board on the condition of its fund with respect to the fiscal year.

(2) When the aforementioned application and certification are made, the allocable portion of moneys from the Municipal Pensions Security Fund shall be paid to the corresponding policemen’s or firemen’s pension and relief fund. Payment to a municipal pension and relief fund shall be made by electronic funds transfer.

(e) The State Auditor and the oversight board have the power, and the duty as each considers necessary, to perform or review audits on the pension and relief funds or to employ an independent consulting actuary or accountant to determine the compliance of the aforementioned certification with the requirements of this section and §8-22-20 of this code. The expense of the audit or determination shall be paid from the Municipal Pensions Security Fund pursuant to provisions of §8-22-18b of this code. If the allocable portion of the Municipal Pensions Security Fund is not paid to the pension and relief fund within 18 months, the portion is forfeited by the pension and relief fund and is allocable to other eligible municipal policemen’s and firemen’s pension and relief funds in accordance with §33-3-14d of this code.
AN ACT to amend and reenact §8-22-11a of the Code of West Virginia, 1931, as amended, relating to eliminating reference to municipal policemen’s pension and relief funds and municipal firemen’s pension and relief funds in section restricting investment of municipal pension funds as such investment is restricted elsewhere in the code.

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 SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.


1 Moneys invested as permitted by §8-22-11 of this code are subject to the restrictions and conditions contained in this section:

4 (1) At no time may more than 75 percent of the portfolio of either fund be invested in securities described in §8-22-11(7) of this code;

7 (2) At no time may more than 20 percent of the portfolio of either fund be invested in securities described in §8-22-
AN ACT to amend and reenact §11-2-3 of the Code of West Virginia, 1931, as amended, relating to removing the residency requirements for hiring deputy assessors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ASSESSORS.


The deputy assessors shall be appointed by the assessor with the advice and consent of the county commission, and may be removed at any time in the discretion of the assessor. Vacancies occurring from any cause in the office of any deputy assessor shall be filled by the assessors.
AN ACT to amend and reenact §30-29-4 of the Code of West Virginia, 1931, as amended, relating to increasing certain fees used to fund certain law-enforcement training and certification and professional development programs and expenses related thereto; increasing a fee added to the usual court costs of all criminal proceedings; and increasing fee added to the amount of any cash or property bond posted for violation of any criminal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-4. Special revenue account—collections; disbursements; administrative expenses.

1. (a) A $12 fee shall be added to the usual court costs of all criminal court proceedings involving violation of any criminal law of the state or any county or municipality of the state, excluding violations of municipal parking ordinances, unless the fee is later modified pursuant to a legislative rule.

7. (b) A $12 fee shall be added to the amount of any cash or property bond posted for violation of any criminal law of the state or any county or municipality of the state, excluding bonds posted solely for violation of municipal parking ordinances, unless the fee is later modified pursuant
to a legislative rule. Upon forfeiture of the bond, the $12 fee shall be deposited as provided in §30-29-4(c) of this code.

(c) All fees collected pursuant to §30-29-4(a) and §30-29-4(b) of this code shall be deposited in a separate account by the collecting agency. Within 10 calendar days following the beginning of each calendar month, the collecting agency shall forward the amount deposited to the State Treasurer. The Treasurer shall deposit all fees received into a special revenue account. The subcommittee shall disburse funds in the account for the funding of law-enforcement entry level training programs, professional development programs, the certification of law-enforcement officers, and to pay expenses of the Governor’s Committee on Crime, Delinquency, and Correction, or the subcommittee in administering the provisions of this article. The expenses may not in any fiscal year exceed 15 percent of the funds deposited to the special revenue account during that fiscal year.

(d) The fees established by this section may be modified by legislative rule as provided in §30-29-3 of this code.

CHAPTER 67
(Com. Sub. for S. B. 398 - By Senators Trump, Takubo, Stollings and Prezioso)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-6a of said code; and to amend and reenact §51-9-10 of said code, all relating to compensation for senior judicial officers; providing that senior judges, justices, and magistrates may receive per diem
compensation for temporary assignments while receiving retirement benefits, subject to certain limitations; setting forth legislative findings; limiting the per diem rate of compensation that may be paid to senior judges and justices for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior judge or justice during a single calendar year may not exceed the annual salary of a sitting circuit judge; limiting the per diem rate of compensation that may be paid to senior magistrates for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate; providing an exception to the limitation on the combined total of per diem compensation and retirement benefits paid to a senior judge, justice, or magistrate in a calendar year, if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying that certain circumstances necessitate extended assignment of such judge, justice, or magistrate; providing that extended assignment of senior judges or justices must not be utilized in a manner to threaten the qualified status of the Judges’ Retirement System under certain provisions of the Internal Revenue Code; requiring that administrative orders regarding extended assignment of a senior judge, justice, or magistrate be submitted to the State Auditor and the State Treasurer; providing that senior judges, justices, and magistrates may be reimbursed for actual and necessary expenses incurred in the performance of their duties; and requiring the State Treasurer to petition the West Virginia Supreme Court of Appeals for a writ of prohibition prohibiting the State Auditor from issuing warrants to authorize payment of compensation to senior judges and justices above statutory limitations.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) “Regularly employed on a full-time basis” means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) “temporary full-time employment” or “temporary part-time employment” means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public
official, in a position which does not otherwise render the individual as regularly employed; (3) “former employee of the Legislature” means any person who has retired from employment with the Legislature and who has at least 10 years’ contributing service with the Legislature; and (4) “reemployed by the Legislature” means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) If a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board’s receipt of written notice thereof. A retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of $20,000.

(d) Senior judges, justices, and magistrates. –

(1) Notwithstanding the provisions of subsection (c) of this section, a retired judge or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-
9-10 of this code while continuing to receive his or her annuity.

(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity.

(e) If a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: Provided, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: Provided, however, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former
employee: Provided further, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

(f) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: Provided, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: Provided, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: Provided, however, That the member elects to stop actively contributing to the system while receiving the in-service distributions.

(h) The provisions of §5-10-22h of this code are not applicable to the amendments made to this section during the 2006 regular session.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.
§50-1-6a. Temporary appointment of retired magistrates.

(a) The West Virginia Supreme Court of Appeals is authorized and empowered to create a panel of senior magistrates to consist of, and to utilize the talent and experience of, retired magistrates of this state.

(b) Senior magistrates recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed $200 for each day actually served: Provided, That the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate, except as set forth in subsection (c) of this section.

(c) Notwithstanding subsection (b) of this section, for purposes of maintaining magisterial efficacy and continuity of magisterial decisionmaking, a senior magistrate may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior magistrate during that calendar year exceeds the annual salary of a sitting magistrate if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting magistrate because of a protracted, but temporary, illness or medical condition or a lengthy suspension which necessitate the extended assignment of the senior magistrate. Immediately upon entering such an order, the chief justice shall submit copies of the order to the State Auditor and the State Treasurer.

(d) In addition to the compensation authorized by this section, senior magistrates recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

CHAPTER 51. COURTS AND THEIR OFFICERS.
ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-10. Services of senior judges and justices.

(a) The Legislature finds that:

1. Section seven, article VIII of the Constitution of West Virginia expressly requires the Legislature to fix judicial salaries by statute, providing that: “[j]ustices, judges and magistrates shall receive the salaries fixed by law”.

2. When originally enacted in 1949, this section of the code required any retired judge receiving retirement benefits to serve as a special judge, when assigned to temporary service, “without charge or compensation, per diem or otherwise to him”.

3. In 1974, the Judicial Reorganization Amendment to the Constitution of West Virginia was ratified. Among other matters, in section eight, article VIII, the amendment addressed the ongoing practice of recalling retired judicial officers to service by empowering the Chief Justice of the Supreme Court of Appeals to recall a retired judge or justice to service, “with his permission and with the approval of the supreme court of appeals”, for temporary assignment.

4. Absent from the Judicial Reorganization Amendment and article VIII of the Constitution of West Virginia is any provision authorizing the Supreme Court of Appeals to fix compensation for recalled judges or justices. Indeed, the Judicial Reorganization Amendment added language to section seven, article VIII of the Constitution of West Virginia, unequivocally stating that “[j]ustices, judges and magistrates shall receive the salaries fixed by law”.

5. In 1975, the Legislature amended and reenacted this section of the code, which still then required any retired judge receiving retirement benefits to serve as a special judge.
judge, when assigned to temporary service “without charge or compensation, per diem or otherwise to him”.

(6) In 1991, the Legislature amended and reenacted this section of the code again, authorizing and empowering the Supreme Court of Appeals to create a panel of senior judges and justices “to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing speedier trials to litigants throughout the State”.

(7) The 1991 reenactment of this section of the code statutorily authorized, for the first time, “reasonable payment” to senior judges and justices “on a per diem basis”, and provided that “the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge”.

(8) In 2018, the West Virginia House of Delegates adopted and communicated Articles of Impeachment to the West Virginia Senate, naming justices of the Supreme Court of Appeals serving at that time as respondents. Several of the articles alleged that certain justices, each while serving as Chief Justice of the Supreme Court of Appeals, had intentionally signed contracts agreeing to pay retired judges recalled to service above the compensation limitations of this section of the code.

(9) In a petition to the Supreme Court of Appeals, styled State ex. rel. Workman v. Carmichael, one justice named as respondent in the 2018 impeachment proceedings challenged the constitutionality of the Articles of Impeachment in which she was named, including the articles alleging payment of senior judges above the limitations of this section of the code.

(10) In ruling on the petition in State ex. rel. Workman v. Carmichael, the Supreme Court of Appeals, at that time composed of five circuit judges temporarily assigned to sit as justices for that case, issued a writ of prohibition staying impeachment proceedings.
(11) In direct contradiction of section seven, article VIII of the Constitution of West Virginia, the decision in State ex. rel. Workman v. Carmichael held, in part, that this section of the code, providing for and limiting the compensation of senior judges, is “unconstitutional and unenforceable”.

(12) The majority opinion in State ex. rel. Workman v. Carmichael ignored the plain language of section seven, article VIII of the Constitution of West Virginia, which explicitly provides that “[j]ustices, judges and magistrates shall receive the salaries fixed by law”.

(13) Syllabus point four of the majority opinion in State ex. rel. Workman v. Carmichael mischaracterizes what the Legislature had done in enacting this section of the code, by providing that: “West Virginia Code §51-9-10 (1991) violates the Separation of Powers Clause of Article V, § 1 of the West Virginia Constitution, insofar as that statute seeks to regulate judicial appointment matters that are regulated exclusively by this Court pursuant to Article VIII, § 3 and § 8 of the West Virginia Constitution. Consequently, W.Va. Code §51-9-10, in its entirety, is unconstitutional and unenforceable”.

(14) Occasionally, circumstances may require the extended assignment of senior judges and justices, necessitating the Legislature to prescribe such circumstances when the limitations on compensation of senior judges and justices receiving retirement benefits may be exceeded.

(b) The Legislature recognizes and acknowledges the authority of the West Virginia Supreme Court of Appeals to recall retired judges and justices for temporary assignment and to create a panel of senior judges and justices to utilize the talent and experience of former circuit court judges and supreme court justices of this state: Provided, That extended assignment of retired judges and justices must not be utilized in such a way as to threaten the qualified status of
the Judges’ Retirement System under applicable provisions of the Internal Revenue Code, including Treasury Regulation section 1.401(a)-1(b)(1) requiring that a qualified plan must be established primarily to provide payment of definitely determinable benefits to its employees after retirement or attainment of normal retirement age.

(c) Senior judges and justices recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed $430 for each day actually served: Provided, That the combined total of per diem compensation and retirement benefits paid to a senior judge or justice during a single calendar year may not exceed the annual salary of a sitting circuit judge, except as set forth in subsection (d) of this section.

(d) Notwithstanding subsection (c) of this section, for purposes of maintaining judicial efficacy and continuity in judicial decisionmaking, a senior judge or justice may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior judge or justice during that calendar year exceeds the annual salary of a sitting circuit judge if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting judicial officer because of a protracted, but temporary, illness or medical condition or a lengthy suspension which necessitate the extended assignment of the senior judge or justice. Immediately upon entering such an order, the Chief Justice shall submit copies of the order to the State Auditor and the State Treasurer.

(e) In addition to the per diem compensation authorized by this section, senior judges and justices recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.
(f) Within 90 days after the effective date of this section, the Treasurer, as the chief custodian of public funds, shall petition the West Virginia Supreme Court of Appeals for a writ of prohibition pursuant to the court’s original jurisdiction, naming as respondent the State Auditor and petitioning the court to prohibit the State Auditor from issuing any warrant for the payment of per diem compensation to senior judges and justices in excess of the limitation on the daily rate of per diem compensation in subsection (c) of this section.

CHAPTER 68

(Com. Sub. for S. B. 18 - By Senators Trump, Boso, Takubo and Cline)

[Passed February 13, 2019; in effect from passage.]
[Approved by the Governor on February 25, 2019.]

AN ACT to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended, relating generally to crimes against the peace; relating to offenses occurring at State Capitol Complex property; and removing the requirement that a person lawfully entitled to possess a firearm must have a concealed weapons permit to have a firearm secured and out of view in his or her vehicle on the State Capitol Complex.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

(a) If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency, or branch of state government or of its political
subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than six months, or both fined and confined: Provided, That any assembly in a peaceable, lawful, and orderly manner for a redress of grievances may not be a violation of this section.

(b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as defined in §61-7-2 of this code: Provided, That a person who may lawfully possess a firearm may keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked and the weapon is out of normal view. It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork, or adornment in the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair, or elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: Provided, however, That, in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: Provided further, That this subsection does not apply to a law-enforcement officer acting in his or her official capacity.

Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 or confined in jail not more than six months, or both.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11A-9, relating to creating the Sexual Assault Victims’ Bill of Rights; declaring additional rights bestowed upon sexual assault survivors regarding medical forensic examinations, sexual assault evidence collection kits, and other similar topics; clarifying the right of a victim to be accompanied by a personal representative during certain proceedings; requiring sexual assault victims be informed or notified of certain rights; incorporating other rights contained in code; and defining terms.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: This act shall be known as Hazel’s Law.

ARTICLE 11A. VICTIM PROTECTION ACT.


(a) In addition to those rights afforded victims of crime by other provisions of this code, a sexual assault victim has the following rights:

(1) The right to a personal representative of the victim’s choice to accompany him or her to a hospital or other health care facility and to attend proceedings concerning the alleged assault, including police interviews and court proceedings: Provided, That nothing in this subsection shall
be construed to violate established forensic interview protocols;

(2) The right to receive a forensic medical examination consistent with the provisions of §61-8B-1(12) of this code conducted by a qualified medical provider in accordance with best practices, taking into consideration the age of the victim and circumstances of the offense;

(3) The right to have a sexual assault evidence collection kit tested and preserved by the investigating law-enforcement agency;

(4) The right to be informed by the investigating law-enforcement agency of any results of the forensic medical examination, if such disclosure would not impede or compromise an ongoing investigation;

(5) The right to be informed in writing of the policies governing the forensic medical examination and preservation of evidence obtained from the examination;

(6) The right to receive, upon his or her written request, notification by United States mail, restricted delivery, to his or her last known address, from the custodian of the evidence obtained from the forensic medical examination no fewer than 60 days prior to the date of the intended destruction or disposal of the evidence: Provided, That notice to a victim which meets the requirements of this subdivision, whether received by the addressee or not, meets all notice requirements imposed by this section;

(7) The right, upon his or her written request, to have the evidence obtained from the forensic medical examination preserved for an additional period not to exceed 10 years; and

(8) The right to be informed of the rights afforded a victim pursuant to this section.

(b) As used in this section, “sexual assault” means any sexual act proscribed by §61-8-1 et seq., §61-8B-1 et seq., and §61-8D-1 et seq. of this code.
AN ACT to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating to equalizing the criminal penalties for intimidating and retaliating against public officers and employees, jurors, and witnesses; increasing penalty for intimidation of such persons to a felony; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-27. Intimidation of and retaliation against public officers and employees, jurors, and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.

(a) Definitions. — As used in this section:

(1) “Fraudulent” means not legally issued or sanctioned under the laws of this state or of the United States, including forged, false, and materially misstated;

(2) “Legal process” means an action, appeal, document instrument, or other writing issued, filed, or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person, incarcerate a person, or direct a person to appear, perform, or refrain from performing a specified act. “Legal process” includes, but is not limited to, a complaint, decree, demand,
indictment, injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena, summons, warrant, or writ;

(3) “Official proceeding” means a proceeding involving a legal process or other process of a tribunal of this state or of the United States;

(4) “Person” means an individual, group, association, corporation, or any other entity;

(5) “Public official or employee” means an elected or appointed official or employee of a state or federal court, commission, department, agency, political subdivision, or any governmental instrumentality;

(6) “Recorder” means a clerk or other employee in charge of recording instruments in a court, commission, or other tribunal of this state or of the United States; and

(7) “Tribunal” means a court or other judicial or quasi-judicial entity, or an administrative, legislative, or executive body, or that of a political subdivision, created or authorized under the constitution or laws of this state or of the United States.

(b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical force, harassment, or a fraudulent legal process or official proceeding, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Impede or obstruct a public official or employee from performing his or her official duties;

(2) Impede or obstruct a juror or witness from performing his or her official duties in an official proceeding;
(3) Influence, delay, or prevent the testimony of any person in an official proceeding; or

(4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document or other object from an official proceeding; (B) alter, destroy, mutilate, or conceal a record, document, or other object impairing its integrity or availability for use in an official proceeding; (C) evade an official proceeding summoning a person to appear as a witness or produce a record, document, or other object for an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned.

(c) Retaliation. — It is unlawful for a person to cause injury or loss to person or property, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Retaliate against a public official or employee for the performance or nonperformance of an official duty;

(2) Retaliate against a juror or witness for performing his or her official duties in an official proceeding; or

(3) Retaliate against any other person for attending, testifying, or participating in an official proceeding, or for the production of any record, document, or other object produced by a person in an official proceeding.

(d) Penalty. — A person convicted of an offense under subsections (b) or (c) of this section is guilty of a felony and shall be confined in a correctional facility not less than one nor more than 10 years, fined not more than $2,000, or both.

(e) Civil cause of action. — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney’s fees, court costs, and other expenses incurred as
a result of prosecuting a civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(f) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section, any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated person for reasonable attorney’s fees, court costs, and other expenses incurred in defending or dismissing such action.

(1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent, nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section; and

(2) If a fraudulent lien or other legal process against a public official or employee or his or her property is recorded then:

(A) Request to release lien. — The public official or employee may send a written request by certified mail to the person who filed the fraudulent lien or legal process requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within 21 days, then it shall be inferred that the person intended to harass the public official or employee in violation of subsection (b) of this section and shall be subject to the criminal penalties in subsection (d) of this section and any other remedies provided in this section; or

(B) Notice of fraudulent lien. — A government attorney on behalf of the public official or employee may record a
notice of fraudulent lien or legal process with the recorder who accepted the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process and cause it to be removed from the records. No filing fee shall be charged for the filing of the notice.

(g) A person’s lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(h)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public officials or employees;

(2) Nothing in this section prohibits or in any way limits a person’s lawful and legitimate right to freely assemble, express opinions, or designate group affiliation; or

(3) Nothing in this section prohibits or in any way limits a person’s lawful and legitimate access to a tribunal of this state or prevents a person from instituting or responding to a lawful action.

CHAPTER 71

(Com. Sub. for S. B. 152 - By Senators Jeffries, Baldwin, Stollings, Woelfel and Lindsay)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to repeal §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4, and §61-11B-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-11-26 of said code; and to amend said code by adding thereto a new section,
designated §61-11-26a, all relating generally to expungement of certain convictions; eliminating statutory authority to reduce certain felonies to misdemeanor status; authorizing those who have used statutory authority to reduce certain felonies to misdemeanors to seek expungement; defining terms; eliminating age limitations for petitioners seeking to expunge certain misdemeanors; expanding eligibility for criminal expungement to persons convicted of certain nonviolent felonies or multiple misdemeanors; providing exclusions from eligibility; establishing time limitations for filing a petition for expungement; creating petition requirements and court procedure for evaluating petitions for orders of expungement for expungable offenses; clarifying disclosure requirements with respect to the information sealed pursuant to an order of expungement, including exemptions; providing standard for inspection of sealed records; establishing fees, including when fees are waived; clarifying that an order of expungement does not reinstate eligibility for certain benefits lost due to expunged conviction; providing time limitations for filing petitions of expungement after completion of certain drug treatment or job training; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26. Expungement of certain criminal convictions; procedures; effect.

(a) Eligibility for expungement. —

(1) Misdemeanors. —

Subject to the limitations set forth in this section, a person convicted of a misdemeanor offense or offenses may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.
Subject to the limitations set forth in this section, a person convicted of a nonviolent felony offense or offenses arising from the same transaction or series of transactions may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

(b) Temporal requirements. —

(1) Misdemeanor. — A person is not eligible for expungement pursuant to subdivision (1), subsection (a) of this section until one year after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) More than one misdemeanor. — A person is not eligible for expungement of multiple misdemeanors pursuant to subdivision (1), subsection (a) of this section until two years after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Nonviolent felonies. — A person is not eligible for expungement of a nonviolent felony pursuant to subdivision (2), subsection (a) of this section until five years after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(c) Limitations on eligibility for expungement. — A person is not eligible for expungement pursuant to subsection (a) of this section for convictions of the following offenses:

(1) Any felony offense of violence against the person as defined in subdivision (2), subsection (p) of this section or any misdemeanor offense involving the intentional
(2) Any felony offense in which the victim of the crime was a minor as defined in subdivision (3), subsection (p) of this section;

(3) Any violation of §61-8B-1 et seq. of this code;

(4) Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;

(5) Any violation of §61-2-28 of this code, or any offense which violates §61-2-9(b) or §61-2-9(c) of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of §61-2-28(c) of this code;

(6) Any violation of §61-2-29 of this code;

(7) Any offense of driving under the influence of alcohol or a controlled substance;

(8) Any offense which violates §17B-4-3 of this code;

(9) Any offense which violates §61-8-12 or §61-8-19 of this code;

(10) Any violation of §61-2-9a of this code;

(11) Any violation of §61-8B-8 and §61-8B-9 of this code;

(12) Any violation of §61-3-11 of this code;

(13) Any conviction for which the sentencing judge made a written finding that the offense was sexually motivated;
(14) Any offense which violates §17E-1-13(g) of this code; and

(15) Any offense of conspiracy or attempt to commit a felony set forth in subdivisions (1) through (13), inclusive, of this subsection.

(d) Content of petition for expungements. — Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information: Provided, That a petition for the expungement of multiple misdemeanors shall identify and group such information by circuit court, as applicable, from which expungement of a particular conviction or convictions is being sought:

(1) The petitioner’s current name and all other legal names or aliases by which the petitioner has been known at any time;

(2) All of the petitioner’s addresses from the date of the offense in connection with which an expungement order is sought to date of the petition;

(3) The petitioner’s date of birth and Social Security number;

(4) The petitioner’s date of arrest, the court of jurisdiction, and criminal complaint, indictment, summons, or case number;

(5) The statute or statutes and offense or offenses for which the petitioner was charged and of which the petitioner was convicted;

(6) The names of any victim or victims, or a statement that there were no identifiable victims;

(7) Whether there is any current order for restitution, protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or
whether there has ever been a prior order for restitution, protection, or restraining order prohibiting the petitioner from contacting the victim. If there is a current order, the petitioner shall attach a copy of that order to his or her petition;

(8) The disposition of the matter and sentence imposed, if any;

(9) The grounds on which expungement is sought, including, but not limited to, employment or licensure purposes;

(10) The steps the petitioner has taken since the time of the offense or offenses toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;

(11) Whether petitioner has ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, by the court of any other state, or by any federal court;

(12) Any supporting documents, sworn statements, affidavits, or other information supporting the petition for expungement.

(e) Service of petition for expungement. — The petitioner shall serve a copy of the petition, with any supporting documentation, pursuant to the rules of the trial court upon the following persons or entities:

(1) The Superintendent of the State Police;

(2) The prosecuting attorney of the county of conviction;

(3) The chief of police or other executive head of the municipal police department where the offense was committed;
(4) The chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner;

(5) The superintendent or warden of any institution in which the petitioner was confined; and

(6) The circuit court, magistrate court, or municipal court which disposed of the petitioner’s criminal charge.

(f) The prosecuting attorney of the county in which expungement is sought shall serve the petition for expungement, accompanying documentation, and any proposed expungement order by first class mail to any identified victims.

(g) Notice of opposition. —

(1) Upon receipt of a petition for expungement, the persons and entities listed in subsection (e) of this section, and any other interested person or agency that desires to oppose the expungement may, within 30 days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition for expungement.

(2) A copy of any notice of opposition with supporting documentation and sworn statements shall be served upon the petitioner in accordance with trial court rules.

(3) The petitioner may file a reply to a notice of opposition no later than 30 days after service of any notice of opposition to the petition for expungement.

(h) Burden of proof. — The burden of proof shall be on the petitioner seeking an order of expungement to prove by clear and convincing evidence:

(1) That the conviction or convictions for which expungement is sought are the only convictions against the petitioner and that the conviction or convictions are not
excluded from expungement by the provisions of this section;

(2) That the requisite time has passed since the conviction or convictions or the completion of any sentence of incarceration or period of supervision as set forth in subsection (b) of this section;

(3) That the petitioner has no criminal charges pending against him or her;

(4) That the expungement is consistent with the public welfare;

(5) That the petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and

(6) Any other facts considered appropriate or necessary by the court to make a determination regarding the petition for expungement.

(i) Court procedure for petition for expungement. —

Within 60 days of the filing of a petition for expungement the circuit court shall:

(1) Summarily grant the petition;

(2) Set the matter for hearing; or

(3) Summarily deny the petition if the court determines that the petition is insufficient or, based upon supporting documentation and sworn statements filed in opposition to the petition, the court determines that the petitioner, as a matter of law, is not entitled to expungement.

(j) Hearing on petition for expungement. —

If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the
background of the petitioner and shall have access to any
reports or records relating to the petitioner that are on file
with any law-enforcement authority, the institution of
confinement, if any, and parole authority or other agency
which was in any way involved with the petitioner’s arrest,
conviction, sentence, and post-conviction supervision,
including any record of arrest or conviction in any other
state or federal court. The court may hear testimony of
witnesses and any other matter the court considers proper
and relevant to its determination regarding the petition. The
court shall enter an order reflecting its ruling on the petition
for expungement with appropriate findings of fact and
conclusions of law.

(k) Sealing of records. — If the court grants the petition
for expungement, it shall order the sealing of all records in
the custody of the court and expungement of any records in
the custody of any other agency or official, including law-
enforcement records. Every agency with records relating to
the arrest, charge, or other matters arising out of the arrest
or conviction that is ordered to expunge records shall certify
to the court within 60 days of the entry of the expungement
order that the required expungement has been completed.
All orders enforcing the expungement procedure shall also
be sealed.

(l) Disclosure of expunged matters. —

(1) Subject to the exceptions set forth in this section,
upon expungement, the proceedings in the matter shall be
considered, as a matter of law, never to have occurred. The
court and other agencies shall reply to any inquiry that no
record exists on the matter. The person whose record is
expunged shall not have to disclose the fact of the record or
any matter relating to the record on an application for
employment, credit, or other type of application: Provided,
That any person applying for a position in which he or she
would be engaging in the prevention, detection,
investigation, prosecution, or incarceration of persons for
violations of the law shall disclose any and all convictions
to his or her prospective employer, regardless of whether the conviction or convictions have been expunged pursuant to this section.

(2) A person for whom an order of expungement has been entered pursuant to this section may not be found guilty of perjury or otherwise giving a false statement, under any provision of this code, because of that person’s failure to recite or acknowledge the arrest, indictment, information, trial, or conviction, as long as the person is in compliance with subdivision (1) of this subsection.

(3) Notwithstanding any provisions of this code to the contrary, any person required by state or federal law to obtain a criminal history record check on a prospective employee are authorized to have knowledge of any convictions expunged under this section.

(m) Inspection of sealed records. — Inspection of the sealed records in the court’s possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that there is a legitimate reason for access and the interests of justice will be served by granting a petition to inspect the sealed record, it may grant access under the terms and conditions determined by the court.

(n) Fees for filing petition for expungement and processing orders of expungement. — The clerk of the circuit court shall charge and collect in advance the same fee for a petition for expungement as is charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code. A person obtaining an order of expungement pursuant to the provisions of this section shall pay a fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement deposited into a special revenue account within the State Treasurer’s office.
to be known as the West Virginia State Police Criminal History Account.

(o) Notwithstanding any provision of this code to the contrary, a person may only obtain the relief afforded by the provisions of this section and §61-11-26a of this code once.

(p) For the purposes of this section:

(1) “Court record” means an official record of a court about a proceeding that the clerk of the court or other court personnel maintains. “Court record” includes an index, a docket entry, a petition or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment.

(2) “Felony crime of violence against the person” means those felony offenses set forth in §61-2-1 et seq., §61-3E-1 et seq., §61-8B-1 et seq., and §61-8D-1 et seq. of this code.

(3) “Felony offenses in which the victim was a minor” means felony violation of §61-3C-14b, §61-8-1 et seq., §61-8A-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code.

(4) “Nonviolent felony” means a felony that:

(A) Is not an offense listed in subsection (c) of this section;

(B) Is not an offense involving the intentional infliction of serious bodily injury;

(C) Is an offense the conviction of which is based on facts and circumstances of which the circuit court finds to be consistent with the purposes of this article; and

(D) Is an offense the conviction of which the circuit court finds does not involve violence or potential violence to another person or the public.
(5) “Records” do not include the records of the Governor, the Legislature, or the Secretary of State that pertain to a grant of pardon. Records that pertain to a grant of pardon are not subject to an order of expungement.

(6) “Seal” means removing information from public inspection in accordance with this section.

(7) “Sealing” means:

(A) For a record kept in a courthouse, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access;

(B) For electronic information about a proceeding on the website maintained by a magistrate court, circuit court, or the Supreme Court of Appeals, removing the record from the public website; and

(C) For a record maintained by any law-enforcement agency, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access.

(q) Statutory construction. — Nothing in this section may be construed to allow a person obtaining relief pursuant to this section to be eligible for reinstatement of any retirement or employment benefit which he or she lost or forfeited due to the conviction or convictions expunged.

(r) The enactment of this section during the 2019 regular session includes the repeal of the provisions of §61-11B-1 et seq. of this code. Any person that had a sentence reduction pursuant to the provisions of §61-11B-1 et seq. of this code may petition the court of record to have the criminal offense reduction order converted into an order of expungement. Upon verification by the court that the petitioner qualifies, the court shall enter an order of expungement of the petitioner’s conviction.
§61-11-26a. Expungement of certain criminal convictions with approved treatment or recovery and job program.

(a) Notwithstanding any provisions of §61-11-26 of this code to the contrary, any person who has been convicted of a nonviolent felony offense or multiple misdemeanors and that would be eligible for expungement pursuant to the provisions of §61-11-26 of this code and who: (1) has a medically documented history of substance abuse and successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health and Human Resources; or (2) graduates from a West Virginia Department of Education-approved Job Readiness Adult Training course, or both, if applicable, may petition the circuit court or circuit courts in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith as provided in §61-11-26 of this code as follows:

(1) Any person who has been convicted of a single misdemeanor that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is eligible for expungement pursuant to §61-11-26(a)(1) of this code upon successful compliance with an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved Job Readiness Adult Training course, or both, if applicable, but after the completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) Any person who has been convicted of multiple misdemeanors that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(1) of this code until one year after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.
(3) Any person who has been convicted of a nonviolent felony offense that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(2) of this code until three years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(b) In addition to the required content of a petition for expungement as required by §61-11-26(d) of this code, any person petitioning for an expungement pursuant to the provisions of this section shall also include the following, if applicable:

1. Documentation of compliance with an approved treatment or recovery and counseling program; and

2. Certificate of graduation from an approved Adult Training Job Readiness course.

(c) A person may file only one petition for expungement, to the circuit court or circuit courts as applicable, pursuant to the provisions of this section and the provisions of §61-11-26 of this code.

(d) The fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement required in §61-11-26(n) of this code is waived for petitions of expungement filed pursuant to the provisions of this section.

ARTICLE 11B. CRIMINAL OFFENSE REDUCTION.

§61-11B-1. Legislative intent.

1 [Repealed.]


1 [Repealed.]

1  [Repealed.]


1  [Repealed.]

§61-11B-5. Employer protections.

1  [Repealed.]

CHAPTER 72

(Com. Sub. for S. B. 264 - By Senators Trump, Hamilton, Cline and Tarr)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §61-11A-4 of the Code of West Virginia, 1931, as amended, relating to requiring courts to order restitution to victims of crime where it is economically practicable; providing for consideration of economic hardship within the order; and providing for the definition of any person compensating a victim for loss to include the West Virginia Crime Victims Compensation Fund for purposes of receiving restitution for funds paid to a crime victim.

Be it enacted by the Legislature of West Virginia:


§61-11A-4. Restitution; when ordered.

1  (a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological, or economic injury or loss to a victim, shall order, in
addition to or in lieu of any other penalty authorized by law,  
that the defendant make restitution to any victim of the  
offense to the greatest extent economically practicable when  
considering the defendant’s financial circumstances.

If the court does not order restitution, or orders only  
partial restitution, under this section, the court shall state on  
the record the reasons therefor.

(b) The order shall require that the defendant:

(1) In the case of an offense resulting in damage to, loss  
of, or destruction of property of a victim of the offense:

(A) Return the property to the owner of the property or  
someone designated by the owner; or  
(B) If return of the property under paragraph (A) of this  
subdivision is impossible, impractical, or inadequate, pay an  
amount equal to the greater of: (i) The value of the property  
on the date of sentencing; or (ii) the value of the property on  
the date of the damage, loss, or destruction less the value (as  
of the date the property is returned) of any part of the  
property that is returned;

(2) In the case of an offense resulting in bodily injury to  
a victim:

(A) Pay an amount equal to the cost of necessary  
medical and related professional services and devices  
relating to physical, psychiatric, and psychological care,  
including nonmedical care and treatment rendered in  
accordance with a method of healing recognized by the law  
of the place of treatment;

(B) Pay an amount equal to the cost of necessary  
physical and occupational therapy and rehabilitation; and  
(C) Reimburse the victim for income lost by the victim  
as a result of the offense;
(3) In the case of an offense resulting in bodily injury that also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) In any case, if the victim (or if the victim is deceased, the victim’s estate) consents, or if payment is impossible or impractical, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim’s estate.

(d) The court shall impose an order of restitution to the extent that the order is as fair as possible to the victim and the imposition of the order will not unduly complicate or prolong the sentencing process.

(e) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation from a third party: Provided, That the court may, in the interest of justice, order restitution to any person who has compensated the victim for loss to the extent that the person paid the compensation. An order of restitution shall require that all restitution to victims under the order be made before any restitution to any other person under the order is made. As used in this section, the term “any person who has compensated the victim for loss” shall include the West Virginia Crime Victims Compensation Fund.

(f) The court may require that such defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than: (1) The end of the period of probation, if probation is ordered; (2) five years after the end of the term of imprisonment imposed, if the court does not order probation; and (3) five years after the date of sentencing in any other case.
If not otherwise provided by the court under this subsection, restitution shall be made immediately.

(g) If the defendant is placed on probation or paroled under this article, any restitution ordered under this section shall be a condition of the probation or parole unless the court or Parole Board finds restitution to be wholly or partially impractical as set forth in this article.

The court may revoke probation and the Parole Board may revoke parole if the defendant fails to comply with the order. In determining whether to revoke probation or parole, the court or Parole Board shall consider the defendant’s employment status, earning ability, financial resources, the willfulness of the defendant’s failure to pay, and any other special circumstances that may have a bearing on the defendant’s ability to pay.

(h) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

(i) Notwithstanding any provision of this section to the contrary, the court may order, in addition to or in lieu of, restitution, that a defendant be required to contribute monetarily, or through hours of service, to a local crime victim’s assistance program or juvenile mediation program which meets the following requirements:

(1) The program is approved by a circuit judge presiding in the judicial circuit; and

(2) The program is a nonprofit organization certified as a corporation in this state, and is governed by a board of directors.
CHAPTER 73

(Com. Sub. for S. B. 295 - By Senators Hamilton, Boso, Facemire, Ihlenfeld, Jeffries, Maynard, Smith, Sypolt, Cline, Trump, Rucker and Lindsay)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-3-19; and to amend and reenact §61-5-7 of said code, all relating to granting courthouse security officers arrest powers under certain circumstances; authorizing certain West Virginia courthouse security officers to carry concealed firearms while off duty with court approval; setting forth firearm training and qualification requirements; requiring supervising authority to issue photo identification and certification cards; specifying policy content; stating legislative intent that the new code section be consistent with the federal Law-Enforcement Officers Safety Act; establishing an effective date of July 1, 2020; criminalizing the obstruction of a courthouse security officer, correctional officer, and certain Fire Marshal’s office personnel while they are acting in their official capacities; criminalizing fleeing from a courthouse security officer, correctional officer, and certain Fire Marshal’s office personnel; criminalizing the disarming or attempted disarming of courthouse security officers and certain Fire Marshal’s office personnel; including the investigation of misdemeanor offenses as subject to prohibition against making false statements; criminalizing the making of materially false statements as to misdemeanor and felony investigations to the State Fire Marshal and certain Fire Marshal’s office personnel; and setting criminal penalties.
Be it enacted by the Legislature of West Virginia:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 3. COURTS IN GENERAL.

§51-3-19. Courthouse security officers; arrest authority; concealed-carry authority; requirements for participation; authorization to carry firearms concealed consistent with federal law.

(a) In furtherance of enhanced courthouse security for court personnel, litigants, and the general public, courthouse security officers charged with effecting courthouse security may arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure occurring within a courthouse while the courthouse security officer is engaged in his or her official duties;

(b) For purposes of subsection (a) of this section, the arrest authority of courthouse security officers is consistent with that of a county deputy sheriff;

(c) In any judicial circuit where there is an order in effect authorizing courthouse security officers to carry a firearm, the circuit court may also authorize, consistent with the provisions of this section, qualifying courthouse security officers to carry a concealed firearm for self-defense purposes pursuant to 18 U.S.C. § 926B, upon the following criteria being met:

(1) The supervising authority of the courthouse security officer shall require courthouse security officers desiring to participate to regularly qualify in the use of firearms with standards therefor which are equal to or exceed those required of sheriff’s deputies in the county in which the courthouse security officers are employed;

(2) The supervising authority of the courthouse security officers shall issue photographic identification and certification cards which identify the courthouse security
(3) Any policy instituted pursuant to this section shall include provisions that:

(A) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of his or her authority to participate in the program;

(B) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm; and

(C) Prohibit persons from carrying a firearm pursuant to this subsection while in an impaired state as defined in §17C-5-2 of this code; and

(4) A courthouse security officer who participates in a program authorized by this section is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition for use when not engaged in his or her official duties.

(d) It is the intent of the Legislature in enacting this section during the 2019 regular session of the Legislature that active courthouse security personnel meeting all the requirements of this section to also meet the requirements of the federal Law-Enforcement Officers Safety Act, 18 U.S.C. § 926B.

(e) The provisions of this section shall become effective July 1, 2020.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.
(a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

(b) A person who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement 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 five days, or both fined and confined. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, “law-enforcement officer” does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law-enforcement officer.
(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

(e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 and shall be confined in jail not more than one year.

(f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $2,000 and shall be imprisoned in a state correctional facility not less than one nor more than five years.

(g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than $1,000 nor more than $3,000 and shall be confined in jail for not less than six months nor more than one year.

(h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

(i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

(j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

(k) For purposes of this section, the term “vehicle” includes any motor vehicle, motorcycle, motorboat, all-
terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms “flee”, “fleeing”, and “flight” do not include a person’s reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer’s direction to stop.

(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical service personnel.

(2) For the purpose of this subsection, the term “interfere with or prevent” includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

(3) For the purpose of this subsection, the term “emergency communication” means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year or shall be fined not less than $250 nor more than $2,000, or both fined and confined.
(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year or fined not less than $500 nor more than $3,000, or both fined and confined.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than $500 nor more than $4,000, or both fined and confined.

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than 10 years prior to the offense in question.

CHAPTER 74

(Com. Sub. for S. B. 402 - By Senators Sypolt, Beach, Stollings, Hamilton, Boso, Cline, Baldwin, Maroney and Prezioso)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-52 of said code, all relating to authorizing the Division of Forestry to investigate and enforce timber theft and intentional damage to the timber of another; increasing the threshold between felony and misdemeanor from $1,000 to $2,500; requiring enhanced penalties for subsequent offenses occurring within 10 years of the first offense; and establishing criminal penalties.
Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3b. Timber theft; investigations; criminal and civil penalties.

(a) Timber theft is the misappropriation or taking of timber belonging to another, or proceeds derived from the sale of timber, either taken without the consent of the owner, or by means of fraudulent conduct, practices, or representations, with the intent to deprive the owner permanently of the timber or proceeds derived therefrom.

(b) The Division of Forestry has the primary responsibility for the collection, preparation, and central registry of information relating to timber theft. The division has the authority to investigate and enforce the provisions of this section when violations of the provisions of §61-3-52 of this code occur.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-52. Wrongful injuries to timber; criminal penalties.

(a) Any person who knowingly and intentionally cuts down, injures, removes, or destroys, without the permission of the owner or his or her agent, timber of a value of $2,500 or less is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in jail for not more than 30 days, or both fined and confined.

(b) Any person who knowingly and intentionally cuts down, injures, removes, or destroys, without the permission of the owner or his or her agent, timber of a value of $2,500 or more or who is convicted of a second or subsequent violation within 10 years of subsection (a) of this section shall be guilty of a felony and, upon conviction thereof, shall
be fined not more than three times the value of the timber cut down, injured, removed, or destroyed, or imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

(c) The necessary trimming and removal of timber to permit the construction, repair, maintenance, cleanup, and operations of pipelines and utility lines and appurtenances of public utilities, public service corporations, and to aid registered land surveyors and professional engineers in the performance of their professional services, and municipalities, and pipeline companies, or lawful operators and product purchasers of natural resources other than timber, shall not be considered a willful and intentional cutting down, injuring, removing, or destroying of timber.

(d) The necessary trimming and removal of timber for boundary line maintenance, for the construction, maintenance, and repair of streets, roads, and highways, or for the control and regulation of traffic thereon by the state and its political subdivisions or registered land surveyors and professional engineers, shall not be considered a willful and intentional cutting down, injuring, removing, or destroying of timber.

(e) No fine or imprisonment imposed pursuant to this section shall be construed to limit any cause of action by a landowner for recovery of damages otherwise allowed by law. If a person charged or convicted under the provisions of this section enters into an agreement with a landowner to make financial restitution for the landowner’s timber damages, any applicable statute of limitations effecting the landowner’s cause of action shall be tolled from the date the agreement was entered into until a breach of the agreement occurs.

(f) If a criminal action is brought under the provisions of this section, the county prosecutor shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code in the county where the property
involved is located which provides a description of the property and a general summary of the timber damages. If a landowner suffering timber damages is not aware of those damages prior to the publication of the Class II legal advertisement, any applicable statute of limitations effecting the landowner’s cause of action for the recovery of damages shall be tolled from the time the damages were incurred, and may not commence until the date the final Class II legal advertisement is published.

CHAPTER 75

(H. B. 2739 - By Delegates Hollen, Graves, Anderson and Malcolm)
(By Request of the West Virginia Consolidated Public Retirement Board)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-13; and to amend and reenact §61-10-20 of said code, all relating to failure of employers to make contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board; authorizing the State Auditor, county commission, or sheriff of the county in which the employer is located to withhold moneys due to an employer that is delinquent in required contributions to a retirement plan after the Consolidated Public Retirement Board has certified the delinquency; authorizing withheld moneys to be applied to the retirement system the delinquent payments would have been made to; providing for interest on delinquencies; requiring the Consolidated Public Retirement Board to provide notice to a participating employer 30 days prior to certifying a delinquency under this section; making it a criminal offense for persons who are responsible for
ensuring that an entity complies with the requirements of a retirement plan administered by the Consolidated Public Retirement Board to knowingly and willfully fail to make employee or employer contributions to a retirement plan for a period of 60 days after the payment is due; and providing criminal penalties.

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 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-13. Withholding state and county money to satisfy delinquencies.

(a) If any employer participating in a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this code fails to make any payment due to the retirement system for a period of 60 days after the payment is due, the participating employer is delinquent, and the delinquency shall be certified by the Consolidated Public Retirement Board to the State Auditor, the county commission of the county in which the participating employer is located, and the sheriff of the county in which the participating employer is located. If any participating employer becomes delinquent as provided in this section, the State Auditor, county commission, or sheriff is authorized and directed to withhold any money due the participating employer by the state or county until the delinquency, together with regular interest thereon, is satisfied. The money withheld by the State Auditor, county commission, or sheriff shall be paid to the applicable retirement system on behalf of the participating employer.
(b) The Consolidated Public Retirement Board shall provide notice to the participating employer 30 days prior to certifying delinquency under this section.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-20. Failure of employers to provide certain benefits for employees.

(a) In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement to pay or provide benefits or wage supplements and who without reasonable justification willfully fails or refuses to pay the amount or amounts necessary to provide the benefits or furnish the supplements within 30 days after the payments are required to be made, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500. When the employer is a corporation, the president, secretary, treasurer or officer exercising responsibility for the nonpayment is guilty of the offense prohibited by this section.

(b) Any person who is responsible for ensuring that an entity complies with the requirements of a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this code, who knowingly and willfully fails to make employee or employer contributions to the retirement plan for a period of 60 days after the payment is due is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or shall be confined in jail for not more than six months, or both fined and confined.

(c) Conviction of a violation of subsection (b) of this section is prima facie evidence of official misconduct.
AN ACT to amend and reenact §61-8B-2 and §61-8B-10 of the Code of West Virginia, 1931, as amended, all relating generally to protecting persons incarcerated or under corrections or court supervision from sexual exploitation by persons supervising them; clarifying that persons participating in community corrections programs lack consent to engage in sexual conduct with persons supervising them in such programs; clarifying that volunteers supervising incarcerated persons or persons under corrections or court supervision are prohibited from engaging in sexual acts with incarcerated persons, supervisees, or participants; updating agency and code references; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-2. Lack of consent.

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion;

(2) Incapacity to consent; or
(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct.

(c) A person is deemed incapable of consent when such person is:

(1) Less than sixteen years old;

(2) Mentally defective;

(3) Mentally incapacitated;

(4) Physically helpless; or

(5) Subject to incarceration, confinement or supervision by a state, county, or local government entity, when the actor is a person prohibited from having sexual intercourse or causing sexual intrusion or sexual contact pursuant to §61-8B-10 of this code.

§61-8B-10. Imposition of sexual acts on persons incarcerated or under supervision; penalties.

(a) Any person employed by the Division of Corrections and Rehabilitation, any person working at a correctional facility managed by the Commissioner of Corrections and Rehabilitation pursuant to contract or as an employee of a state agency or as a volunteer or any person employed by, or acting pursuant to, the authority of any sheriff, county commission, or court to ensure compliance with the provisions of §62-11B-1 et seq. of this code who engages in sexual intercourse, sexual intrusion, or sexual contact with a person who is incarcerated in this state 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 nor more than five years or both fined and imprisoned.
(b) Any person employed by the Division of Corrections and Rehabilitation as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer, who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, 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 nor more than five years, or both fined and imprisoned.

(c) Any person working or volunteering in an alternative sentence program authorized by the provisions of §62-11C-1, et seq. of this code who, as part of his or her employment or volunteer duties, supervises program participants, engages in sexual intercourse, sexual intrusion, or sexual contact with a program participant is guilty of a felony and upon conviction, shall be fined not more than $5,000, imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(d) The term “incarcerated in this state” for purposes of this section includes in addition to its usual meaning, offenders serving a sentence under the provisions of article §62-11B-1 et seq. of this code.

(e) Authorized pat-down, strip search or other security related tasks do not constitute sexual contact pursuant to this section.
AN ACT to amend and reenact §62-12-2 of the Code of West Virginia, 1931, as amended, relating to eligibility for probation generally; adding the option of a psychological study and diagnosis to the studies and treatment required for a person to be eligible for probation upon conviction of certain sexually related offenses; and adding offenses involving preparation, distribution, or exhibition of obscene matter to minors to the list of offenses for which such examinations are required for probation eligibility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor are eligible for probation, notwithstanding the provisions of §61-11-18 and §61-11-19 of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment, or brandishing of a firearm is not eligible for probation. Nothing in this section may apply to an accessory before the fact or a principal in the second degree who has been
convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm may not be applicable unless the fact is clearly stated and included in the indictment or presentment by which that person is charged and is either:

(A) Found by the court upon a plea of guilty or nolo contendere; or

(B) Found by the jury, if the matter be tried before a jury, upon submitting to the jury a special interrogatory for such purpose; or

(C) Found by the court, if the matter be tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year 1981:

(A) Apply to all applicable offenses occurring on or after August 1 of that year;

(B) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(C) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the
finding is sought as fully as such grounds are otherwise
required to be stated in an indictment, unless the grounds
therefor are alleged in the indictment or presentment upon
which the matter is being tried; and

(D) May not apply with respect to cases not affected by
the amendment and in such cases the prior provisions of this
section shall apply and be construed without reference to the
amendment.

Insofar as such amendments relate to mandatory
sentences without probation, all such matters requiring such
sentence shall be proved beyond a reasonable doubt in all
cases tried by the jury or the court.

(d) For the purpose of this section, the term “firearm”
means any instrument which will, or is designed to, or may
readily be converted to, expel a projectile by the action of
an explosive, gunpowder, or any other similar means.

(e) Any person who has been found guilty of, or pleaded
guilty to, a violation of the provisions of §61-8-12 of this
code, the provisions of §61-8A-1 et seq. of this code, the
provisions of §61-8B-1 et seq. or §61-8C-1 et seq. of this
code, or under the provisions of §61-8D-5 of this code may
only be eligible for probation after undergoing a physical,
mental, and psychiatric or psychological study and
diagnosis which shall include an ongoing treatment plan
requiring active participation in sexual abuse counseling at
a mental health facility or through some other approved
program: Provided, That nothing disclosed by the person
during such study or diagnosis may be made available to
any law-enforcement agency or other party without that
person's consent, or admissible in any court of this state,
unless the information disclosed indicates the intention or
plans of the probationer to do harm to any person, animal,
institution, or property, in which case the information may
be released only to such persons as might be necessary for
protection of the said person, animal, institution, or
property.
Within 90 days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of the provisions of §61-8B-1 et seq. and §61-8C-1 et seq. or §61-8D-5 and §61-8D-6 of this code, or of §61-2-14, §61-8-12, and §61-8-13 of this code, or of a felony violation involving a minor of §61-8-6 or §61-8-7 of this code, or of a similar provision in another jurisdiction shall be required to be registered upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender send written notice to the State Police of the release of the offender. The notice shall include:

(1) The full name of the person;
(2) The address where the person shall reside;
(3) The person’s Social Security number;
(4) A recent photograph of the person;
(5) A brief description of the crime for which the person was convicted;
(6) Fingerprints; and
(7) For any person determined to be a sexually violent predator as defined in §15-12-2a of this code, the notice shall also include:
(i) Identifying factors, including physical characteristics;

(ii) History of the offense; and

(iii) Documentation of any treatment received for the mental abnormality or personality disorder.

CHAPTER 78

(Com. Sub. for S. B. 40 - By Senator Weld)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, and §62-16-7, all relating to establishing a Military Service Members Court program within the Supreme Court of Appeals; providing legislative findings establishing the need for creation of a Military Service Members Court program; defining terms; granting authority to the Supreme Court of Appeals to establish a Military Service Members Court program under the oversight of its administrator; providing for no termination of any program until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the President of the Senate; providing that a Military Service Members Court judge may establish rules and make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of the program; providing for funding mechanisms which may include court fees; providing for limitation of liability; setting forth eligibility requirements for participation; providing for written
agreement to participate in the court; setting forth procedure to participate in court; allowing for mental health and drug treatment services for participants; providing for sanctions for violation of provisions of the court; setting forth incentives for successful participation; setting out disposition on successful completion; providing that Military Service Members Courts shall if deemed appropriate by the Supreme Court of Appeals collect and maintain information on program participants; setting forth that offenders may be required to provide certain information to Military Service Members Courts; and requiring Military Service Members Courts to keep offender treatment records in a secure environment separated from the court records to which the public has access.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.


This may be cited as the Military Service Members Court Act.

§62-16-2. Legislative findings.

(a)(1) The Legislature recognizes that while most veterans are strengthened by their military service, the combat experiences of many veterans have unfortunately left a growing number of veterans who suffer from issues such as Post Traumatic Stress Disorder and traumatic brain injury. A growing body of research shows that one in five veterans will have symptoms of a mental illness, mental health disorder, or cognitive impairment. One in six veterans who served in either Operation Enduring Freedom or Operation Iraqi Freedom suffer from substance abuse and related issues. As a result, many veterans have found themselves in the criminal court system charged with crimes which may be directly attributable to these service-related issues.
(2) The Legislature further recognizes that a Military Service Members Court is necessary to link veterans with the programs, benefits, and services that are necessary to help them overcome these issues and provide them with rehabilitation services instead of incarceration.

(3) Given the context of veteran life, especially given their past training and experiences in the Armed Forces, it is reasonably anticipated and likely that military service members would respond favorably to a structured environment. The Military Service Members Court is a professional, structured, and monitored program which mandates and provides participant accountability and responsibility, including mandatory court appearances, treatment, and counseling sessions, as well as frequent and random testing for drug and alcohol use. However, the Legislature also finds that some may still struggle. Those are the veterans who need the structure and support of a Military Service Members Court program the most. Without the structure of a Military Service Members Court program mentally ill and challenged veterans may well reoffend, remain in the criminal court system, and suffer under the emotional, physical, and mental yoke of substance abuse.

(4) The Legislature creates the Military Service Members Court to ensure that these veterans in need are able meet their obligations to themselves, their family, their loved ones, the court, and their community.


For the purposes of this article:

“Assessment” means an evaluation to determine whether a criminal defendant is a military service member as defined by this section, that the offense he or she has been charged with are attributable to their military service, and if the offender would benefit from the provisions set forth in this article.

“Court” means a Military Service Members Court.
“Department” means the West Virginia Department of Veterans Assistance.

“Military Service Members Court program” or “program” is a program that includes pre-adjudicatory and post-adjudicatory treatment for military service members.

“Military service member” means a person who is currently serving in the Army, Air Force, Marines, Navy, or Coast Guard on active duty, reserve status, or in the National Guard, or a person who served in the active military, or who was discharged or released under conditions other than dishonorable.

“Offender” means a criminal defendant who qualifies as a military service member under this article.

“Post-adjudicatory program” means a program in which the offender has admitted guilt or has been found guilty and agrees, with the prosecutor’s consent, to enter a court program as part of his or her sentence.

“Pre-adjudicatory program” means a program that allows the offender, with the consent of the prosecutor, team, and the court to expedite the offender’s criminal case before conviction or before filing of a criminal case and requires the offender to agree to and successfully complete the court program as part of the written agreement.

“VA” means the United States Department of Veterans Affairs.

“VJO” means the Veterans Justice Outreach program of the United States Department of Veterans Affairs.

“Written agreement” means the agreement executed to allow a military service member to participate in a court program.

§62-16-4. Court authorization; funding; immunity from liability.
(a) *Court authorization.* — The Supreme Court of Appeals is hereby authorized to establish a Military Service Members Court program, under the oversight of its administrator. Each Military Service Members Court may be a stand-alone court or operated in conjunction with an existing drug court or other specialty court program. The Supreme Court of Appeals is further encouraged to give deference to circuits or regions in the operation of those programs to maximize flexibility, and to take into account regional and other differences and circumstance.

(b) Once a program is established, termination of any program may not take place until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the President of the Senate.

(c) Each court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of this article.

(d) A court may offer pre-adjudication or post-adjudication programs for adult offenders.

(e) Nothing contained in this article confers a right or an expectation of a right to participate in a court program nor does it obligate a court to accept every military service member offender.

(f) Neither the establishment of a Military Service Members Court nor anything in this article may be construed as limiting the discretion of the prosecuting attorney to act on any criminal case which he or she determines advisable to prosecute.

(g) *Funding.* — Each Military Service Members Court, with the guidance of the Supreme Court of Appeals, may establish a schedule for the payment of reasonable fees and
costs to be paid by participants necessary to conduct the
program.

(h) Nothing in this article prohibits Military Service
Members Courts from obtaining supplemental funds or
exploring grants to support the courts.

(i) Immunity from liability. — Any person who, in good
faith, provides services pursuant to this article is not liable
in any civil action, unless his or her actions were the result
of gross negligence or willful misconduct. The grant of
immunity provided in this section extends to all employees
and administrative personnel of a court.

§62-16-5. Eligibility; written agreement.

(a) Eligibility. — A military service member offender,
who is eligible for probation based upon the nature of the
offense for which he or she has been charged, and in
consideration of his or her criminal background, if any,
may, upon application, be admitted into a court program
only upon the agreement of the prosecutor and the offender.
Additionally, the court must also determine whether the
offense is in any way attributable to the offender’s military
service.

(b) A military service member offender may not
participate in the court program if he or she has been
charged with any of the following offenses:

(1) A sexual offense, including, but not limited to, a
violation of the felony provisions of §61-8-1 et seq., §61-
8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this
code, or a criminal offense where the judge has made a
written finding that the offense was sexually motivated;

(2) A felony violation of the provisions of §61-8D-2,
§61-8D-2a, or §61-8D-3a of this code;

(3) A felony violation of the provisions of §61-14-3 or
§61-14-4 of this code;
(4) A felony violation of §61-2-9b or §61-2-14 of this code;

(5) A felony violation of §61-2-28 of this code;

(6) A felony violation of §17C-5-2(b) of this code; or

(7) If he or she has previously been convicted in this state, another state, or in a federal court for any of the offenses enumerated above.

(c) Written agreement. — Participation in a Military Service Members Court program, with the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This written agreement shall set forth all of the agreed upon provisions to allow the military service member offender to proceed in the court. The offender shall execute a written agreement with the court as to his or her participation in the program and shall agree to all of the terms and conditions of the program, including, but not limited to, the possibility of sanctions or incarceration for failing to comply with the terms of the program.

(d) Upon successful completion of a court program, the judge shall dispose of an offender’s case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court. Disposition may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration.

§62-16-6. Procedure; mental health and substance abuse treatment; violation; termination.

(a) Procedure. — Upon application, the court shall order the offender to submit to an eligibility screening, a mental health and drug/alcohol screening, and an assessment by the Department of Veterans Affairs (VA) Veterans Justice Outreach to provide information on the offender’s mental health or military service member status. The assessment shall
include a risks assessment and be based, in part, upon the known availability of treatment resources available to the court. The assessment shall also include recommendations for treatment of the conditions which are indicating a need for treatment under the monitoring of the court and reflect a level of risk assessed for the individual seeking admission. The court is not required to order an assessment if a valid screening or assessment related to the present charge(s) pending against the offender has been completed within the previous 60 days.

(b) The court may order the offender to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to complete mental health counseling in an inpatient or outpatient basis, comply with all physician recommendations regarding medications, and complete all follow-up treatment. The mental health issues for which treatment may be provided include, but are not limited to, post-traumatic stress disorder, traumatic brain injury, and depression.

(c) Mental health and substance abuse treatment. — The court may maintain a network of mental health treatment programs and substance abuse treatment programs representing a continuum of graduated mental health and substance abuse treatment options commensurate with the needs of offenders; these shall include programs with the VA, the department, this state, and community-based programs.

(d) Violation. — The court may impose reasonable sanctions under the offender’s written agreement, including, but not limited to, imprisonment or dismissal of the offender from the program. The court may reinstate criminal proceedings against him or her for a violation of probation, conditional discharge, or supervision hearing, if the court finds from the evidence presented, including, but not limited to, the reports or proffers of proof from the court’s professionals that:

(1) The offender is not performing satisfactorily in the assigned program;
(2) The offender is not benefitting from educational treatment or rehabilitation;

(3) The offender has engaged in criminal conduct rendering him or her unsuitable for the program; or

(4) The offender has otherwise violated the terms and conditions of the program or his or her sentence or is for any reason unable to participate.

(e) **Termination.** — Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the offender, successfully terminate the offender’s sentence, permit the offender to enter into a plea agreement to a lesser offense, or otherwise discharge him or her from any further proceedings against him or her in the original prosecution.

(f) Notwithstanding any provision of this code to the contrary, upon successful completion of the terms and conditions of the program, or if the presiding judge determines the lack of the ability to operate a motor vehicle is preventing program success, the court may expunge any driving offenses that prevent the veteran offender from obtaining a West Virginia driver’s license.

§62-16-7. Program integrity and offender accountability.

(a) If deemed appropriate by the Supreme Court of Appeals or its administrative office, the courts shall collect and maintain information on participants which may include, but is not limited to, the following:

(1) The participants’ prior criminal history;

(2) The participants’ prior substance abuse and mental health treatment history;

(3) The participants’ employment, education, and income histories;

(4) The participants’ gender, race, ethnicity, marital and family status, and any child custody and support obligations;
(5) Instances of participants’ recidivism occurring during and after participation in a court program. Recidivism may be measured at intervals of six months, one year, two years, and five years after successful graduation from Military Service Members Court;

(6) The number of offenders screened for eligibility, the number of eligible offenders who were and were not admitted, and their case dispositions; and

(7) The costs of operation and sources of funding.

(b) An offender may be required, as a condition of pretrial diversion, probation, or parole, to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect an offenders’ privacy in accordance with federal and state confidentiality laws, a court shall keep treatment records in a secure environment, separated from the court records to which the public has access.

CHAPTER 79

(Com. Sub. for S. B. 61 - By Senators Weld and Trump)

[Amended and again passed March 6, 2019 as a result of the objection of the Governor; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §62-1D-6, §62-1D-8, and §62-1D-9 of the Code of West Virginia, 1931, as amended, relating to including the crime of extortion to the list of crimes for which a prosecutor may apply for a court order authorizing interception of communications; permitting for the lawful disclosure of
lawfully intercepted communications in court proceedings including federal court; and permitting the use of derivative crime evidence to obtain an arrest warrant or indictment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.


1 Evidence obtained, directly or indirectly, by the interception of any wire, oral, or electronic communication shall be received in evidence only in grand jury proceedings and criminal proceedings in magistrate court, circuit court, and any other court of competent jurisdiction: Provided,

5 That evidence obtained in violation of the provisions of this article shall not be admissible in any proceeding.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

1 The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in §62-1D-7 of this code and the judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral, or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (1) Kidnapping or abduction, as defined and prohibited by the provisions of §61-2-14 and §61-2-14a of this code and including threats to kidnap or demand ransom, as defined and prohibited by the provisions of §61-2-14c of this code; (2) any offense included and prohibited by §25-4-11, §61-5-8, §61-5-9, and §61-5-10 or §62-8-1 of this code to the extent that any of said sections provide for offenses punishable as a felony; (3) felony violations of §60A-1-101 et seq. of this code; (4)
violations of §61-14-1 et seq. of this code; (5) violations of §61-2-1 of this code; (6) violations of §61-2-12 of this code; (7) felony violations of §61-8B-1 et seq. of this code; (8) violations of §61-1-1 of this code; (9) violations of §61-13-3 of this code; (10) extortion, as defined in §61-2-13 of this code; or (11) any aider or abettor to any of the offenses referenced in this section or any conspiracy to commit any of the offenses referenced in this section if any aider, abettor, or conspirator is a party to the communication to be intercepted.

§62-1D-9. Lawful disclosure or use of contents of communication.

(a) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom, may disclose the contents to another investigative or law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate, or possession of the United States, including the District of Columbia, only to the extent that the disclosure is required for the proper performance of the official duties of the officer making or receiving the disclosure, however, a record of such disclosure and the date, time, method of disclosure, and the name of the person or persons to whom disclosure is made shall be forwarded, under seal, to the designated circuit judge who authorized such interception, who shall preserve said record for not less than 10 years. In the event the designated judge shall leave office prior to the expiration of this 10-year period, he or she shall transfer possession of said record to another designated judge.

(b) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom or any investigative or a law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, who obtains such
knowledge by lawful disclosure may use the contents to the extent that the use is appropriate to the proper performance of his or her official duties under the provisions of this article.

(c) Any person who has received any information concerning a wire, oral, or electronic communication intercepted in accordance with the provisions of this article or evidence derived therefrom, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of this state, any political subdivision of this state, or the federal courts of the United States.

(d) An otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this article does not lose its privileged character: Provided, That when an investigative or law-enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized by this article, intercepts a wire, oral, or electronic communication and it becomes apparent that the conversation is attorney-client in nature, the investigative or law-enforcement officer shall immediately terminate the monitoring of that conversation: Provided, however, That notwithstanding any provision of this article to the contrary, no device designed to intercept wire, oral, or electronic communications shall be placed or installed in such a manner as to intercept wire, oral, or electronic communications emanating from the place of employment of any attorney at law, licensed to practice law in this state.

(e) When an investigative or law-enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in §62-1D-9(a) and §62-1D-9(b) of this code. Such contents and any evidence derived
therefrom may be used under §62-1D-9(c) of this code when authorized or approved by the designated circuit judge where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this article. The application shall be made as soon as may be practicable after such contents or the evidence derived therefrom is obtained.

(f) Any law-enforcement officer of the United States, who has lawfully received any information concerning a wire, oral, or electronic communication or evidence lawfully derived therefrom, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of this state or of the United States.

(g) Any information relating to criminal activities other than those activities for which an order to intercept communications may be granted pursuant to §62-1D-8 of this code may be disclosed only if such relates to the commission of a felony under the laws of this state or of the United States, and such information may be offered, if otherwise admissible, as evidence in any such criminal proceeding.

CHAPTER 80

(Com. Sub. for S. B. 387 - By Senator Weld)

[Passed February 21, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2019.]

generally to extradition; recodifying existing extradition procedures in a new article; including persons who have been improperly released prior to completion of a sentence as being subject to extradition; designating the Commissioner of the Division of Corrections and Rehabilitation as the responsible official as to incarcerated persons subject to extradition; clarifying the proper types and number of documents used in the extradition process; and updating of designated persons or entities in other jurisdictions involved in the extradition process.

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 1. THE GOVERNOR.

§5-1-6. Extradition of fugitives from foreign nations.

1 [Repealed.]

§5-1-7. Extradition of persons charged with crime in another state or imprisoned or awaiting trial in another state.

1 [Repealed.]

§5-1-8. Governor’s warrant of arrest.

1 [Repealed.]

§5-1-9. Hearing after arrest; application for writ of habeas corpus; arrest and confinement of fugitives from another state; bail; persons involved in criminal or civil actions in this state.

1 [Repealed.]

§5-1-10. Return of fugitive from this state.
§5-1-11. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

§5-1-12. How costs paid; complainant responsible for.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 14A. EXTRADITION.

§62-14A-1. Extradition of fugitives from foreign nations.

(a) The Governor, whenever required by the executive authority of the United States pursuant to the Constitution and laws thereof, shall deliver over to justice any person found within this state who shall be charged with having committed any crime without the jurisdiction of the United States.

(b) The Governor, though not so required, may in his or her discretion deliver over to justice any person found within this state who shall be charged with having committed without the jurisdiction of the United States any crime except treason, which by the laws of this state, if committed herein, would be punishable by death or imprisonment in the penitentiary. The Governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify an indictment against the person, had the crime charged been committed in this state. The expense of the apprehension and delivery shall be defrayed by those to whom the delivery is made.

§62-14A-2. Extradition of persons charged with crime in another state or imprisoned or awaiting trial in another state.

(a) Where appearing in this article, the term “Governor” includes any person performing the functions of Governor
by authority of the law of this state. The term “executive authority” includes the Governor, and any person performing the functions of Governor in a state other than this state. The term “state”, referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

(b) Subject to the provisions of this article, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state: Provided, That the demand or application of the executive authority of such other state is accompanied by an affidavit or sworn evidence that the demand or application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view to serve him or her there with civil process.

(c) No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under subsection (g) of this section, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he or she fled from the state, and accompanied by a copy of an indictment found, or by information supported by affidavit, in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate or justice thereof, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his or her bail, probation, or parole. The indictment, information, or affidavit made before the magistrate or
justice must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

(d) When a demand shall be made upon the Governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General, any prosecuting officer, or the West Virginia State Police, in this state to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person so demanded, and whether he or she ought to be surrendered.

(e) When it is desired to have returned to this state a person charged in this state with crime, and such person is imprisoned or is held under criminal proceedings then pending against him or her in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his or her term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(f) The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in §62-14A-5(b) of this code, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state voluntarily (involuntarily).

(g) The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in subsection (c) of this section, with committing an act in this state, or in a third state, intentionally resulting
in a crime in the state whose executive authority is making
the demand, and the provisions of this article not otherwise
inconsistent, shall apply to such cases, even though the
accused was not in that state at the time of the commission
of the crime, and has not fled therefrom.


(a) If the Governor decides that the demand should be
complied with, the Governor shall sign a warrant of arrest
which shall be sealed by the Secretary of State with the
Great Seal of West Virginia, and be directed by the
Governor to any peace officer or other person whom he or
she may think fit to entrust with the execution thereof. The
warrant must substantially recite the facts necessary to the
validity of its issuance.

(b) Such warrant shall authorize the peace officer or
other person directed to arrest the accused at any time and
any place where he or she may be found within the state and
to command the aid of all peace officers or other persons in
the execution of the warrant, and to deliver the accused,
subject to the provision of this article, to the duly authorized
agent of the demanding state.

(c) The Governor may recall the warrant of arrest or
may issue another warrant whenever the Governor deems
proper.

(d) Every such peace officer or other person empowered
to make the arrest shall have the same authority, in arresting
the accused, to command assistance therein, as peace
officers have by law in the execution of any criminal process
directed to them, with like penalties against those who
refuse their assistance.

§62-14A-4. Hearing after arrest; application for writ of
habeas corpus; arrest and confinement of fugitives from
another state; bail; persons involved in criminal or civil
actions in this state.
(a) No person arrested upon a warrant shall be delivered over to the agent whom the executive authority demanding him or her appointed to receive him or her unless he or she shall first be taken forthwith before a judge of a court of record in this state, who shall inform him or her of the demand made for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel and if the prisoner or his or her counsel shall state that he, she, or they desire to test the legality of his or her arrest, the judge of the court of record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

(b) Any officer who delivers to the agent for extradition of the demanding state a person in his or her custody under the Governor’s warrant, in willful disobedience to subsection (a) of this section, shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $1,000 or be imprisoned not more than six months, or both.

(c) The officer or persons executing the Governor’s warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or person having charge of him or her is ready to proceed on his or her route, the officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in the other
state, and who is passing through this state with such a prisoner for the purpose of immediately returning the prisoner to the demanding state may, when necessary, confine the prisoner in any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, the officer or agent, however, being chargeable with the expense of keeping: Provided, That the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he or she is actually transporting a prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner may not be entitled to demand a new requisition while in this state.

(d) Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under §62-14A-2(g) of this code, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the state and that the accused has been charged in the state with the commission of the crime, and, except in cases arising under §62-14A-2(g) of this code, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate, or court who or which may be available in, or convenient of access to, the
place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(e) The arrest of a person may be lawfully made also by any peace officer, or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or by imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him or her under oath setting forth the ground for the arrest as in the preceding section and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant. Correctional officers may, additionally, make complaint against persons in their custody for whom, they have a reasonable belief, stand accused of crimes, punishable by death or confinement for a term exceeding one year, in the courts of another state.

(f) If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under §62-14A-2(g) of this code, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county or regional jail for a time not exceeding 30 days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in subsection (g) of this section, or until he or she shall be legally discharged.

(g) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and
in a sum as he or she considers proper, conditioned for his
or her appearance before him or her at a time specified in
the bond, and for his or her surrender, to be arrested upon
the warrant of the Governor of this state.

(h) If the accused is not arrested under warrant of the
Governor by the expiration of the time specified in the
warrant or bond, a judge or magistrate may discharge him
or her or may recommit him or her for a further period not
to exceed 60 days, or a judge or magistrate may again take
bail for his or her appearance and surrender as provided in
subsection (g) of this section, but within a period not to exceed 60 days after the date of the new bond.

(i) If the prisoner is admitted to bail, and fails to appear
and surrender himself or herself according to the conditions
of his or her bond, the judge, or magistrate, by proper order,
shall declare the bond forfeited and order his or her
immediate arrest without warrant if he or she is within this
state. Recovery may be had on a bond in the name of the
state as in the case of other bonds given by the accused in
criminal proceedings within this state.

(j) If a criminal prosecution has been instituted against
the person under the laws of this state and is still pending,
the Governor, in his or her discretion, either may surrender
him or her on demand of the executive authority of another
state or hold him or her until he or she has been tried and
discharged or convicted and punished in this state: 
Provided, That any person under recognizance to appear as
a witness in any criminal proceeding pending in this state
may in the discretion of the Governor be surrendered on
demand of the executive authority of another state or be held
until criminal proceeding pending in this state has been
determined: Provided, however, That any person who was
in custody upon any execution, or upon process in any suit,
at the time of being apprehended for a crime charged to have
been committed without the jurisdiction of this state, may
not be delivered up without the consent of the plaintiff in an
execution or suit, until the amount of the execution has been
paid, or until the person shall be otherwise discharged from
the execution or process.

(k) The guilt or innocence of the accused as to the crime
for which he or she is charged may not be inquired into by
the Governor or in any proceeding after the demand for
extradition accompanied by a charge of crime in legal form
as provided in this article has been presented to the
Governor, except as it may be involved in identifying the
person held as the person charged with the crime.

§62-14A-5. Return of fugitive from this state.

(a) Whenever the Governor shall demand from the
executive authority of another state or from a judge of the
Superior Court of the District of Columbia the return to this
state of a person found in such state or the District of
Columbia who is charged with a crime, who has escaped
from confinement, who has been improperly released prior
to completion of his or her period of confinement, or who
violated the terms of his or her bail, probation, or parole, the
Governor shall issue a warrant for the person under the
Great Seal of West Virginia, affixed thereon by the
Secretary of State to an agent, commanding said agent to
receive the person so charged if delivered to him or her and
to transport the person to the proper officer of this state or a
county of this state in which the offense was committed.

(b) When the return to this state of a person charged with
a crime in this state is required, the prosecuting attorney
shall present to the Governor his or her written application
for a requisition for the return of the person charged, in
which application shall be stated the name of the person so
charged, the crime charged against him or her, the
approximate time, place, and circumstances of its
commission, the state in which he or she is believed to be,
including the location of the accused therein, at the time the
application is made, and certifying that, in the opinion of the
said prosecuting attorney, the ends of justice require the
arrest and return of the accused to this state for trial and that
the proceeding is not instituted to enforce a private claim.

(c) When the return to this state is required of a person
who has been previously convicted of a crime in this state
and has escaped from confinement, has been improperly
released prior to completion of his or her period of
confinement, violated the terms of his or her bail, probation,
or parole, the prosecuting attorney of the county in which
the offense was committed, the Parole Board, or the
Commissioner of the Division of Corrections and
Rehabilitation from which escape, improper release, or
violation of terms of bail, probation, or parole was
committed, shall present to the Governor a written
application for a requisition for the return of such person, in
which application shall be stated the name of the person, the
crime of which the person was convicted, the circumstances
of his or her escape from confinement, or of the breach of
the terms of his or her bail, probation, or parole, the state in
which the person is believed to be, including the location of
the person therein at the time application is made.

(d) The application shall be verified by affidavit, shall
be executed in duplicate and shall, pursuant to subsection
(b) of this section, be accompanied by either: Two certified
copies of the indictment returned or information and
affidavit filed, or, pursuant to subsection (c) of this section,
two certified copies of the complaint made to the judge or
justice, stating the offense with which the accused is
charged, or the judgment of conviction or of the sentence.
The prosecuting attorney, Parole Board, Commissioner of
the Division of Corrections and Rehabilitation, or sheriff
may also attach such further affidavits and other
identification documents in duplicate as he or she shall
deem proper to be submitted with such application. One
copy of the application, with the action of the Governor
indicated by endorsement thereon, and one of the certified
copies of the indictment, complaint, information, and
affidavits, or of the judgment of conviction or of the
sentence shall be filed in the office of the Secretary of State, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor’s requisition.

§62-14A-6. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

(a) A person brought into this state by, or after waiver of, extradition based on a criminal charge, shall not be subject to service of personal process in civil actions until the person has been convicted in the criminal proceedings, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited.

(b) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his or her bail, probation or parole may waive the issuance and service of the warrant provided for in §62-14A-3(a) and §62-14A-12(d) of this code, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record, within this state, a writing which states that the person consents to return to the demanding state: Provided, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his or her rights with respect to the issuance and service of a warrant of extraditiон and with respect to obtaining a writ of habeas corpus as provided for in §62-14A-4(a) of this code.

If and when such consent has been duly executed it shall forthwith be forwarded to the Office of the Governor. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, That nothing in this subsection shall be deemed to limit the rights of the accused person to return
voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(c) Prior waiver of extradition. — Notwithstanding any other provision of this code, a law-enforcement or corrections agency in the State of West Virginia holding a person who is charged by another jurisdiction with a violation of his or her terms of probation, parole, bail, or other form of conditional release in another jurisdiction which is demanding the return of such person shall immediately deliver the person to the duly authorized agent of the demanding state, and without the requirement of a Governor’s warrant, if such person has previously executed a waiver of extradition as a condition of his or her current terms of probation, parole, bail, or other form of conditional release in the demanding state and upon receipt of the following documentation from the demanding state:

(1) A certified copy of the previously executed waiver of extradition being held by the officials in the demanding state or an electronically or electromagnetically transmitted facsimile thereof;

(2) A certified copy of an order or warrant from the demanding state seeking the return of the person or an electronically or electromagnetically transmitted facsimile thereof; and

(3) A photograph, fingerprints, or other evidence which identifies the person held by the law-enforcement or corrections agency as the person who signed the waiver of extradition and who is named in the order or warrant, or an electronically or electromagnetically transmitted facsimile thereof.

(d) Nothing in this article contained shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for an offense
committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any offense committed within this state, nor shall any proceedings under this article which result in, or fail to result in, extradition, be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way whatsoever.

(e) After a person has been brought back to this state by, or after waiver of, extradition proceedings, the person may be tried in this state for any offense which the person may be charged with having committed here as well as that specified in the requisition for his or her extradition.

(f) Nothing in this section shall be construed to limit the authority of the Governor, at his or her own instance, to refuse to honor an extradition demand from another jurisdiction.


When the punishment of the crime shall be the confinement of the criminal in the penitentiary, expenses incurred shall be paid from funds available to the Division of Corrections and Rehabilitation. In all other cases such expenses shall be paid out of the county treasury of the county wherein the crime is alleged to have been committed.

The complainant in each case is answerable for all the actual costs and charges, and for the support in prison of any person so committed; and, if the charge for his or her support in prison shall not be paid when demanded, the jailer may discharge such person from prison.
AN ACT to amend and reenact §62-7-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §62-7-10a, all relating to commitment order forms; providing forms for state correctional facility and jail commitments; requiring use of statutory forms after July 1, 2019; requiring magistrate court and circuit court clerks immediately provide judicially entered orders to the Division of Corrections and Rehabilitation; requiring that orders sent to prisons must be signed by the circuit judge with jurisdiction over the matter; requiring that orders sent to jails must be signed by the circuit court judge or magistrate with jurisdiction over the matter; acknowledging that the costs of incarceration in jail pending transfer to a state correctional facility shall be paid by the Commissioner from the calendar date following the date of the conviction forward as of July 1, 2019; clarifying the method of transmittal of commitment orders; and establishing an internal effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 7. EXECUTION OF SENTENCES; STAYS.


1 The clerk of a circuit court in which a person is
2 sentenced to serve a period of incarceration in a state prison
shall transmit to the Commissioner of the Division of Corrections and Rehabilitation a certified commitment order in the form provided for in this section. A person may not be committed to a prison unless the commitment order is signed by the circuit judge with jurisdiction over the matter. The amendments to this section enacted during the 2019 regular session of the Legislature are effective July 1, 2019.

IN THE CIRCUIT COURT OF

____________________ COUNTY, WEST VIRGINIA

State of West Virginia

v. circuit court Case No.___________________

Defendant: ______________________________

DOB: ________________ SSN: XXX-XX-______

Gender: _____Male/______Female

WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION CERTIFIED PRISON COMMITMENT ORDER

On the ______day of __________________, 20___, the State of West Virginia, by ____________________________, and the defendant appeared in person and with counsel, ________________________________.

The defendant has been convicted of the following offense(s):

_______________________________________________

The defendant is committed to the custody of the Commissioner of Corrections and Rehabilitation for a period of:

_______________________________________________.

Conviction Date: _______________ Sentence Date: _______________

Effective Sentence Date: _____ Resentence Date: _______
Consecutive to: ____ Concurrent with: _________________________________

Credit for Jail/Prison Time Served: ______days Credit for Home Incarceration: ______days
Credit for Home Incarceration Parole: ______days Other NonPenal Credit: ________days

Additionally, the court finds: ____________________________________________

The defendant shall be transported to and held in a facility under the control of the Commissioner of the Division of Corrections and Rehabilitation. The court further orders that the cost of incarceration in the jail pending transfer shall be paid by the Commissioner consistent with the provisions of §15A-3-16 of this code.

Special Instructions:

It is further ordered that the Circuit Clerk shall immediately transmit a certified copy of this commitment order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation by facsimile at (fax number), by email at (email address) or other electronic transmission, or by mail at (street address).

Enter this _____day of __________, 2____.

________________________
Circuit Judge
§62-7-10a. Jail commitment order.

The clerk of a circuit court or magistrate court in which a person is sentenced to serve a period of incarceration in a jail facility under the control of the Commissioner of Corrections and Rehabilitation shall transmit to the Commissioner of the Division of Corrections and Rehabilitation a certified commitment order in the form provided for in this section. A person may not be committed to a jail unless the commitment order is signed by the circuit court judge or magistrate with jurisdiction over the matter. The amendments to this section enacted during the 2019 regular session of the Legislature are effective on July 1, 2019.

IN THE CIRCUIT/MAGISTRATE COURT OF _________________ COUNTY, WEST VIRGINIA

State of West Virginia

v. circuit/magistrate court Case No.___________

Defendant: _______________________________

DOB: ___________ SSN: XXX-XX-______

Gender: _____Male/_____Female

WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION CERTIFIED JAIL COMMITMENT ORDER

On the ______day of __________________, 20___, the State of West Virginia, by ___________________________, and the defendant appeared in person and with counsel, _________________________________.

The defendant has been convicted of the following offense(s):

_______________________________________________
The defendant is committed to the custody of the Commissioner of Corrections and Rehabilitation for a period of:

Conviction Date: ___________ Sentence Date: _________

Effective Sentence Date: ___________ Resentence Date: ___________

Consecutive to: ____ Concurrent with: _______________________

Credit for Time Served: _____days Credit for Home Incarceration: _____ days

Credit for Home Incarceration Parole: _____days Other NonPenal Credit: _____ days

Additionally, the court finds:

The defendant shall be transported to and held in a jail facility for the prescribed period of confinement in accordance with law.

The court further orders that the cost of incarceration of misdemeanants sentenced to confinement in a jail shall be paid in accordance with the provisions of §15A-3-16 of this code.

Special Instructions:

It is further ordered that the Circuit Clerk or Magistrate Court Clerk shall immediately transmit a certified copy of this commitment order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation by facsimile at (fax number), by email at (email address) or other electronic transmission, or by mail at (street address).

Enter this _____day of __________, 2____.

Circuit Judge/Magistrate
AN ACT to amend and reenact §62-15-9a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-15B-1 and §62-15B-2, all relating generally to drug courts; removing certain restrictions on Drug Court Participation Fund expenditures; providing for disposition of moneys from said fund at the end of a fiscal year; permitting the Supreme Court of Appeals of West Virginia to create a family drug treatment court pilot program; permitting the implementation of a family drug treatment court pilot program in at least four circuits; restricting family drug treatment courts to individuals with substance use disorders who are involved in a child abuse and neglect case; permitting the Supreme Court of Appeals of West Virginia provide oversight, technical assistance and training; establishing a state family drug treatment court advisory committee; establishing a local family drug treatment court advisory committee; requiring each local family drug treatment court advisory committee to establish criteria for the eligibility and participation of adult responders who have been adjudicated to be an abusive or neglectful parent and who have been granted a post-adjudicatory improvement period and who have a substance use disorder; prohibiting certain respondents from being eligible for participation in a family drug treatment court; and providing that participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement by and between the adult respondent and the department with the concurrence of the court.
Be it enacted by the Legislature of West Virginia:

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.


(a) The special revenue fund created within the State Treasury designated the Adult Drug Court Participation Fund to be administered by the West Virginia Supreme Court of Appeals is hereby continued. The fund shall consist of moneys received from individuals participating in an adult drug court program.

(b) All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court’s adult drug court program shall be deposited into the Adult Drug Court Participation Fund. Any moneys remaining in the fund at the end of a fiscal year shall remain in the fund and be available for expenditure during the ensuing fiscal year.

(c) All moneys deposited into the State Treasury and credited to the Adult Drug Court Participation Fund shall be used to pay the costs associated with maintaining and administering the court’s adult drug court programs.

ARTICLE 15B. FAMILY DRUG TREATMENT COURT ACT.

§62-15B-1. Oversight and implementation of family drug treatment courts.

(a) The Supreme Court of Appeals of West Virginia may implement a Family Drug Treatment Court pilot program in at least four circuits.

(b) Family drug treatment courts are specialized court dockets within the existing structure of West Virginia’s court system offering judicial monitoring of intensive treatment and strict supervision of individuals with substance use disorder involved in a child abuse and neglect case pursuant to §49-4-601, et. seq.
(c) The Supreme Court of Appeals of West Virginia may:

(1) Provide oversight for the distribution of funds for family drug treatment courts;

(2) Provide technical assistance to family drug treatment courts;

(3) Provide training for judges who preside over family drug treatment courts;

(4) Provide training to the providers of administrative, case management, and treatment services to family drug treatment courts; and

(5) Monitor the completion of evaluations of the effectiveness and efficiency of family drug treatment courts in the state.

(d) A state family drug treatment court advisory committee shall be established to:

(1) Evaluate and recommend standards for the planning and implementation of family drug treatment courts;

(2) Assist in the evaluation of their effectiveness and efficiency;

(3) Encourage and enhance cooperation among agencies that participate in their planning and implementation; and

(4) Report by January 1, annually, to the Legislative Oversight Commission on Health and Human Resources Accountability regarding legislation to enhance family drug treatment courts.

(e) The committee shall be chaired by the Chief Justice of the Supreme Court of Appeals of West Virginia or his or her designee and shall include a circuit court judge who presides over a family drug treatment court; the Director of the Office of Drug Control Policy or the executive assistant
to the director; Cabinet Secretary of the Department of Health and Human Resources or his or her designee; the commissioners or their designee of the following bureaus: the Bureau for Children and Families; the Bureau for Public Health; and the Bureau for Behavioral Health; the Executive Director of the West Virginia Prosecuting Attorneys Institute or his or her designee; the Executive Director of the West Virginia Public Defender Services or his or her designee; and the Executive Director of West Virginia CASA Association or his or her designee.

(f) Each circuit selected to establish a family drug treatment court shall establish and maintain a local family drug treatment court advisory committee. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the family drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees:

1. The family drug treatment court judge;
2. The prosecuting attorney of the county;
3. The public defender or a member of the county bar who represents individuals in child abuse and neglect cases;
4. The Community Service Manager of the Bureau of Children and Families of the Department of Health and Human Resources;
5. A court appointed special advocate, as applicable; and
6. Any other individuals selected by the family drug treatment court advisory committee.


(a) Each local family drug treatment court advisory committee shall establish criteria for the eligibility and participation of adult respondents who have been
(b) Participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement into by and between the adult respondent and the department with concurrence of the court.

CHAPTER 83

(Com. Sub. for H. B. 2740 - By Delegates Shott, Harshbarger and Mandt)

[Passed March 1, 2019; in effect ninety days from passage.]  
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §42-1-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §42-1-11 and §42-1-12, all relating to inheritance; barring a parent from inheriting from or through a child of the parent in certain instances; and permitting a child to inherit from a parent in certain instances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DESCENT.

§42-1-1. General definitions.

Subject to additional definitions contained in the subsequent articles that are applicable to specific articles,
parts or sections, and unless the context otherwise requires in this code:

(1) “Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care and an individual authorized to make decisions for another under a natural death act.

(2) “Beneficiary” as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a “beneficiary of a beneficiary designation”, refers to a beneficiary of an account with POD designation, of a security registered in beneficiary form (TOD) or other nonprobate transfer at death; and, as it relates to a “beneficiary designated in a governing instrument”, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation or a person in whose favor a power of attorney or a power held in any individual, fiduciary or representative capacity is exercised.

(3) “Court” means the county commission or branch in this state having jurisdiction in matters relating to the affairs of decedents.

(4) “Conservator” means a person who is appointed by a court to manage the estate of a protected person.

(5) “Descendant” of an individual means all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

(6) “Devise” when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.
(7) “Devisee” means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(8) “Distributee” means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(9) “Estate” includes the property of the decedent, trust or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(10) “Exempt property” means that property of a decedent’s estate which is provided for in section forty-eight, article VI of the Constitution.

(11) “Fiduciary” includes a personal representative, guardian, conservator and trustee.

(12) “Foreign personal representative” means a personal representative appointed by another jurisdiction.

(13) “Formal proceedings” means proceedings conducted before a judge with notice to interested persons.

(14) “Governing instrument” means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of
attorney or a donative, appointive or nominative instrument of any other type.

(15) “Guardian” means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(16) “Heirs” means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(17) “Informal proceedings” mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(18) “Interested person” includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(19) “Issue” of a person means descendant as defined in subdivision (5) of this section.

(20) “Joint tenants with the right of survivorship” and “community property with the right of survivorship” includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party’s contribution.

(21) “Lease” includes an oil, gas or other mineral lease.
(22) “Letters” includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship.

(23) “Minor” means a person who is under 18 years of age.

(24) “Mortgage” means any deed of trust, conveyance, agreement or arrangement in which property is encumbered or used as security.

(25) “Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(26) “Parent” includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent. However, a parent is barred from inheriting from or through a child of the parent pursuant to the provisions of §42-1-11 of this code.

(27) “Payor” means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person authorized or obligated by law or a governing instrument to make payments.

(28) “Person” means an individual or an organization.

(29) “Personal representative” includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.

(30) “Petition” means a written request to the court for an order after notice.
(31) “Proceeding” includes action at law and suit in equity.

(32) “Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(33) “Security” includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(34) “Settlement” in reference to a decedent’s estate, includes the full process of administration, distribution and closing.

(35) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(36) “Successor personal representative” means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(37) “Successors” means persons, other than creditors, who are entitled to property of a decedent under his or her will or this code.

(38) “Survive” means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event. The term includes its derivatives, such as “survives”, “survived”, “survivor” and “surviving”.

(39) “Surviving spouse” means the person to whom the decedent was married at the time of the decedent’s death.

(40) “Testacy proceeding” means a proceeding to establish a will or determine intestacy.

(41) “Testator” includes an individual of either sex.

(42) “Trust” includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives and custodial arrangements, including that relating to gifts or transfers to minors, dealing with special custodial situations, business trusts providing for certificates to be issued to beneficiaries.

(43) “Trustee” includes an original, additional or successor trustee, whether or not appointed or confirmed by court.

(44) “Will” includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

§42-1-11. When a parent may not inherit from a child.

(a) A parent is barred from inheriting from or through a child of the parent if: (1) The parent’s parental rights were terminated by court order and the parent-child relationship has not been judicially reestablished; or (2) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under the law of this state other than this article on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.
(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

§42-1-12. When a child may inherit from a parent who has been barred from inheritance.

If a parent is barred from inheriting under the provisions of W.Va. Code §42-1-11, the child may still inherit from or through the barred parent as long as a parent-child relationship does not exist between the child as an adoptee with another person as the adoptee’s adoptive parent.

CHAPTER 84

(S. B. 664 - By Senators Azinger, Baldwin, Beach, Boso, Clements, Hardesty, Jeffries, Lindsay, Maynard, Romano, Smith, Woelfel and Trump)

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §48-2-406, relating to authorizing certain members of the federal judiciary to perform marriages.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. MARRIAGES.

PART IV. MARRIAGE CEREMONY.


Notwithstanding any provision of this code to the contrary, active and senior status judges appointed under
3 Article III of the United States Constitution and federal
4 magistrate-judges, who are residents of this state, are
5 authorized to perform marriages in any county of this state.

CHAPTER 85

(S. B. 153 - By Senators Jeffries, Stollings, Lindsay,
Clements, Smith, Baldwin, Plymale, Ihlenfeld,
Hamilton and Boso)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §31-15A-10 of the Code of West
Virginia, 1931, as amended, relating to the West Virginia
Infrastructure and Jobs Development Council; increasing the
percentage of the infrastructure fund that may be used for
grants; providing authority to transfer additional funds
designated to loans on to the grant program under certain
circumstances; clarifying how funding assistance may be
spent; and increasing the cap on annual spending that may be
made on the preapplication process to project sponsors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE
AND JOBS DEVELOPMENT COUNCIL.

§31-15A-10. Recommendations by council for expenditures of
funds by loan, grant, or for engineering assistance.

(a) To further accomplish the purpose and intent of this
article, the Water Development Authority shall use the
moneys in the Infrastructure Fund created pursuant to §31-
15A-9 of this code, upon receipt of one or more
recommendations from the council pursuant to §31-15A-5
of this code, to make loans, with or without interest, loan
guarantees, or grants and to provide other assistance, financial, technical, or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the Infrastructure Fund in the form of grants shall not exceed 25 percent of the total funds available for the funding of projects: Provided, however, That if on January 1 of any year, the amount available for grants in any congressional district is below $150,000, the council may convert up to 30 percent of the funds available for loans in that congressional district to be used for grants within the congressional district, if and when needed to make an award. No loan, loan guarantee, grant, or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant, or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided further, That no grant shall be made to a project sponsor that is not a governmental agency or a not-for-profit corporation under the provisions of Section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants, or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to §31-15A-4 of this code. Any recommendation of the council approving a loan, loan guarantee, grant, or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users’ likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of
the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of 50 percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the Water Development Authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to §29A-3-1 et seq. of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six tenths of one percent. Funding assistance made from the Infrastructure Fund for loans and grants to projects, after transfers required to make the state match for the water and wastewater revolving loan programs pursuant to §22C-2-1, et seq. and §16-13C-1, et seq., of this code, shall be provided by the council on a pro rata basis divided equally among the congressional districts of this state as delineated in accordance with §1-2-3 of this code: Provided, That infrastructure projects as defined in §31-15A-2(l) of this code shall not be subject to pro rata distribution. When determining median household income of a geographic area of the project to be served, the council
shall consider any surveys of the income of the households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the preapplication would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the preapplication process from moneys available in the Infrastructure Fund for making loans: Provided, That the council may only provide funding assistance in an amount equal to $5,000 or 50 percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the preapplication process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, $500,000 annually.

(f) The council shall report to the Governor, the Speaker of the House of Delegates, and the President of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article.
AN ACT to amend and reenact §5B-2E-10 of the Code of West Virginia, 1931, as amended, relating to annual legislative review of the economic development tax credit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-10. Legislative review.

The Development Office shall report annually to the Joint Commission on Economic Development by December 1 of each year on the number of applications received from eligible companies as provided in this article, the identity of each eligible company, whether the eligible company is seeking the tourism development project credit or the tourism development expansion project credit, or both, a description of the tourism development projects to which the credit may be applied, the status of each application, the number of projects approved, the status of each project, whether the projects are certified multiple year projects, the amount of credit allowed, and the amount of consumers sales and service tax generated by each project.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-17, relating to creating the West Virginia Motorsport Committee; setting forth who serves on the committee; setting forth its duties; requiring meetings and hearings; and requiring reports.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-17. West Virginia Motorsport Committee.

(a) The West Virginia Motorsport Committee is hereby created.

(b) The committee consists of five members, including its chairperson, appointed by the Governor to serve at his or her will and pleasure.

(c) The Commissioner of Tourism and the Director of the West Virginia Development Office shall also serve on the committee, ex officio.

(d) The committee shall:

(1) Work with the existing facilities within the state to enhance existing racing;

(2) Develop a strategy that creates further opportunities, such as encouraging racing training schools, conducting
special events, and encouraging special events and the
collection of larger in-state racing facilities; and

(3) Seek opportunities to promote economic growth and
manufacturing jobs related to motorsports.

(e) The committee shall hold regular meetings, at least
quarterly, and conduct public hearings as it deems
necessary.

(f) Members of the committee will receive no
compensation but are entitled to reimbursement for mileage
expenses while attending meetings of the committee to the
extent that funds are available through the Development
Office.

(g) The committee shall report on the status of its duties,
goals, accomplishments and recommendations to the
Legislature on at least an annual basis.

CHAPTER 88

(Com. Sub. for H. B. 2550 - By Delegates Capito,
Nelson, Queen and Fast)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §5B-8-1, §5B-8-2,
§5B-8-3, §5B-8-4, and §5B-8-5, all relating to creating a
matching program for the Small Business Innovation
Research Program and the Small Business Technology
Transfer Program; providing that matching funds are to be
paid from the Entrepreneurship and Innovation Investment
Fund; defining terms; defining eligibility; providing terms of
the grant; defining the application process; and providing for legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SMALL BUSINESS INNOVATION RESEARCH AND SMALL BUSINESS TECHNOLOGY TRANSFER MATCHING FUNDS PROGRAM.

§5B-8-1. Definitions.

When used in this article:

“Department” means the West Virginia Department of Commerce.


“Small business” means a corporation, partnership, limited liability company, statutory or common law business trust, sole proprietorship, or individual, operating a business for profit, which qualifies as a small business and otherwise meets the requirements of the SBIR or STTR programs.

“West Virginia-based business” means a business that has its principal place of business in this state.

§5B-8-2. Creating a matching program.

The West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program is established. It shall be administered by the department which is hereby authorized to promulgate legislative rules governing the program. In order to foster
job creation and economic development in the state, the department may provide grants to eligible small businesses to match funds they receive from Small Business Innovation Research or Small Business Technology Transfer Phase I and Phase II awards. The department will pay the grants from the fund known as the “Entrepreneurship and Innovation Investment Fund” created pursuant to §5B-2-16 of this code.

§5B-8-3. Eligibility.

In order to be eligible for a grant under this article, a small business must satisfy all of the following conditions:

(1) The small business must be a for-profit, West Virginia-based business;

(2) For the Phase I and/or Phase II Matching program the small business must have received a SBIR/STTR Phase I or SBIR/STTR Phase II award from a participating federal agency in response to a specific federal solicitation. To receive the full match for the Phase I award, the small business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has an interest in a Phase II proposal, and submitted a Phase II proposal to the agency; To receive the Phase II match, the small business must have submitted the final progress report to the funding agency;

(3) The small business must satisfy all federal SBIR/STTR requirements;

(4) The small business shall not receive concurrent funding support from other sources that duplicates the purpose of this article;

(5) The small business must certify that at least 51 percent of the research described or to be described in the federal SBIR/STTR Phase II proposal will be conducted in this state and that the small business will remain a West
Virginia-based business for the duration of the SBIR/STTR Phase II project; and

(6) The small business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal.

§5B-8-4. Application process.

(a) A small business shall apply, under oath, to the department on forms prescribed by the department that include at least the following:

(1) The name of the small business, the form of business organization under which it is operated, and the names and addresses of the principals and management of the small business;

(2) For matching awards, notice of award from the funding agency of the SBIR/STTR Phase I or Phase II award;

(3) For matching awards, study section evaluation and comments; and

(4) Any other information necessary for the department to evaluate the application.

(b) The department shall review the application, determine whether the applicant satisfies the eligibility requirements, and determine whether to award matching grants.

§5B-8-5. Grant terms.

(a) The department may award a “WV Phase Zero Grant” of $2500 upon submission of a Phase I SBIR/STTR proposal or Fast track SBIR/STTR proposal. The WV Phase Zero grant shall be remitted to the small business upon notification from the granting agency of the receipt of a submission for an SBIR/STTR Phase I or SBIR/STTR fast track application. The small business must provide satisfactory evidence to the department of the notification
of receipt. A small business may receive only one WV Phase Zero Grant per year. A small business may receive only one WV Phase Zero Grant with respect to each federal proposal submission; resubmissions of unsuccessful applications are not eligible. Over its lifetime, a small business may receive a maximum of five WV Phase Zero awards. A grant recipient may assign an award only upon the prior written consent of the department.

(b) The department may award grants to match funds received by a small business through a SBIR/STTR Phase I proposal up to a maximum of $100,000 paid in two remittances. Fifty percent of the award under this subsection shall be remitted to the small business upon receipt of the SBIR/STTR Phase I award and an application to the department for the funds. The remaining fifty percent of the award under this subsection shall be remitted to the small business upon submission by the small business of a Phase II application to the funding agency, acceptance of the Phase I report by the funding agency, and application to the department for the funds. A small business may receive only one grant under this subsection per year. A small business may receive only one grant under this subsection with respect to each federal proposal submission. Over its lifetime, a small business may receive a maximum of five awards under this subsection. A grant recipient may assign the award only upon the prior written consent of the department.

(c) The department may award grants to match the funds received by a small business through a SBIR/STTR Phase II proposal up to a maximum of $100,000 per year for up to two years, after application to the department. The second remittance may be made to the small business on the one-year anniversary of the first matching remittance under this subsection, if applicant applies for the funds with documentation from the agency indicating that the grant is to continue for a second year. A small business may receive only one grant under this subsection per year. A small business may receive only one award under this subsection.
with respect to each federal proposal submission. Over its lifetime, a small business may receive a maximum of five awards under this subsection. A grant recipient may assign the award only upon the prior written consent of the department.

CHAPTER 89

(Com. Sub. for S. B. 26 - By Senator Blair)

[Passed February 25, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7B-2 of said code, all relating to permitting full-time employees of educational services cooperatives to participate in the State Teachers Retirement System; and permitting full-time employees of educational services cooperatives to participate in the State Teachers’ Defined Contribution Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


As used in this article, unless the context clearly requires a different meaning:

“Accumulated contributions” means all deposits and all deductions from the gross salary of a contributor plus regular interest.
“Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member.

“Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

“Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

“Average final salary” means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

“Beneficiary” means the recipient of annuity payments made under the retirement system.

“Contributor” means a member of the retirement system who has an account in the Teachers Accumulation Fund.

“Deposit” means a voluntary payment to his or her account by a member.

“Employer” means the agency of and within the state which has employed or employs a member.

“Employer error” means an omission, misrepresentation, or violation of relevant provisions of the
West Virginia Code, or of the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

“Employment term” means employment for at least 10 months, a month being defined as 20 employment days.

“Gross salary” means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member’s rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

“Member” means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.
“Members of the administrative staff of the public schools” means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

“Members of the extension staff of the public schools” means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

“New entrant” means a teacher who is not a present teacher.

“Nonteaching member” means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; or (E) a governing board, as defined in §18B-1-2 of this code: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

“Plan year” means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

“Present member” means a present teacher or nonteacher who is a member of the retirement system.

“Present teacher” means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

“Prior service” means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a
retirement account because he or she was legally ineligible for membership during the service.

“Public schools” means all publicly supported schools, including colleges and universities in this state.

“Refund beneficiary” means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

“Regular interest” means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

“Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

“Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of 70 and one-half years.

“Retirant” means any member who commences an annuity payable by the retirement system.

“Retirement board” means the Consolidated Public Retirement Board created pursuant to §5-10D-1 et seq. of this code.

“Retirement system” means the State Teachers Retirement System established by this article.

“Teacher member” means the following persons, if regularly employed for full-time service: (A) Any person
employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education, or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; and (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article.

“Total service” means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of 70 years shall be considered to be 70 years.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.
§18-7B-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 “Annual addition” means, for purposes of the
4 limitations under Section 415(c) of the Internal Revenue
5 Code, the sum credited to a member’s account for any
6 limitation year of: (A) Employer contributions; (B)
7 employee contributions; and (C) forfeitures. Repayment of
8 cash-outs or contributions as described in Section 415(k)(3)
9 of the Internal Revenue Code, rollover contributions and
10 picked-up employee contributions to a defined benefit plan
11 may not be treated as annual additions, consistent with the
12 requirements of Treasury Regulation §1.415(c)-1.

13 “Annuity account” or “annuity” means an account
14 established for each member to record the deposit of
15 member contributions and employer contributions and
16 interest, dividends, or other accumulations credited on
17 behalf of the member.

18 “Compensation” means the full compensation actually
19 received by members for service whether or not a part of the
20 compensation is received from other funds, federal or
21 otherwise, than those provided by the state or its
22 subdivisions: Provided, That annual compensation for
23 determining contributions during any determination period
24 may not exceed the maximum compensation allowed as
25 adjusted for cost of living in accordance with §5-10D-7 of
26 this code and Section 401(a)(17) of the Internal Revenue
27 Code: Provided, however, That solely for purposes of
28 applying the limitations of Section 415 of the Internal
29 Revenue Code to any annual addition, “compensation” has
30 the meaning given it in §18-7B-13d of this code.

31 “Consolidated board” or “board” means the
32 Consolidated Public Retirement Board created and
33 established pursuant to §5-10D-1 et seq. of this code.
“Defined contribution system” or “system” means the Teachers’ Defined Contribution Retirement System created and established by this article.

“Employer” means the agency of and within the State of West Virginia which has employed or employs a member.

“Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds.

“Employment term” means employment for at least 10 months in any plan year with a month being defined as 20 employment days.

“Existing employer” means any employer who employed or employs a member of the system.

“Existing retirement system” means the State Teachers Retirement System established in §18-7A-1 et seq. of this code.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

“Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any
county board of education, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education, educational services cooperative, or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers’ Defined Contribution Retirement System established by this article.

“Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the Teachers’ Defined Contribution Retirement System.

“Permanent, total disability” means a mental or physical incapacity requiring absence from employment service for at least six months: Provided, That the incapacity is shown by an examination by a physician or physicians selected by the board: Provided, however, That for employees hired on or after July 1, 2005, “permanent, total disability” means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

“Plan year” means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.
“Public schools” means all publicly supported schools, including normal schools, colleges, and universities in this state.

“Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

“Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of 70 and one-half years.

“Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

“Year of employment service” means employment for at least ten months, with a month being defined as 20 employment days: Provided, That no more than one year of service may be accumulated in any 12-month period.

CHAPTER 90
(Com. Sub. for S. B. 154 - By Senators Jeffries, Baldwin, Stollings, Lindsay, Plymale, Hamilton and Boso)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-13d, relating to the Specialist Nicholas Caleb Jividen Act; authorizing the use of school facilities for funerals and memorial services; recognizing
schools are integral parts of communities and the death of certain community members can have a significant impact on communities; requiring county board of education to allow school facilities use for funeral and memorial services of certain community members; permitting county boards of education to establish process for requesting the use of school facilities for funeral and memorial services; providing that county boards of education are not responsible for additional costs associated with such funeral and memorial services that are held at school facilities; and prohibiting such funeral and memorial services held at school facilities from disrupting or interfering with classroom instruction, scheduled school event or activity, or governmental use.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13d. Use of school facilities for funeral and memorial services.

(a) Public schools in this state serve as an integral part of the community and the death of a community member of distinction who was a military service member or veteran who served under honorable conditions, or who served as a first responder, can have a significant impact on students and the surrounding community.

(b) Notwithstanding any other provision of this code or any policy currently in place, county boards of education shall allow school facilities in the county to be used for the funeral or memorial service, or both funeral and memorial services, of a community member of distinction who was a military service member or veteran who served under honorable conditions or who served as a first responder, consistent with this section. County boards may set up a process by which requests to use school facilities for such purposes may be made. County boards may not be responsible for additional costs incurred as a result of holding the funeral or memorial service at the school facility.
(c) Any funeral or memorial service held at a school facility may not disrupt or interfere with classroom instruction, any other scheduled school event or activity, or other official governmental use, such as when a school serves as a polling place for an election.

CHAPTER 91

(S. B. 267 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 11, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend and reenact §18-2-12 of the Code of West Virginia, 1931, as amended, relating to requiring the State Board of Education to adopt a policy detailing the appropriate level of computer science instruction that shall be available to students at each programmatic level; and requiring the West Virginia Department of Education to develop and offer professional development opportunities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-12. Computer science courses of instruction; learning standards; state board plan development.

(a) Legislative findings:

(1) Computer technology increasingly is pervasive in nearly every function of society from consumer products to transportation, communications, electrical infrastructure, logistics, agriculture, medical treatments, research, security, and financial transactions;
(2) The U. S. Bureau of Labor Statistics predicts that by 2024, there will be more than 800,000 new jobs in the STEM fields and more than two thirds of these directly will be in computing occupations;

(3) Studying computer science prepares students to enter many career areas, both within and outside of computing, teaching them logical reasoning, algorithmic thinking, design, and structured problem-solving skills applicable in many contexts from science and engineering to the humanities and business;

(4) Computer science is an established discipline at the collegiate and post-graduate levels but, unfortunately, computer science concepts and courses have not kept pace in the K-12 curriculum, to the point that the nation faces a serious shortage of computer scientists at all levels that is likely to continue for the foreseeable future; and

(5) Organizations such as the Computer Science Teachers Association, the International Society for Technology in Education, and technology industry leaders have developed recommendations for standards, curriculum, and instructional resources for computer technology learning in K-12 schools.

(b) Prior to the 2017 regular legislative session, the state board shall submit a plan to the Legislative Oversight Commission on Education Accountability for the implementation of computer science instruction and learning standards in the public schools. The plan shall include at least the following:

(1) Recommendations for a core set of learning standards designed to provide the foundation for a complete computer science curriculum and its implementation at the K-12 level including, but not limited to:
(A) Introducing the fundamental concepts of computer science to all students, beginning at the elementary school level;

(B) Presenting computer science at the secondary school level in a way that is both accessible and worthy of an academic curriculum credit and may fulfill a computer science, math, or science graduation credit;

(C) Encouraging schools to offer additional secondary level computer science courses that will allow interested students to study facets of computer science in more depth and prepare them for entry into the workforce or college; and

(D) Increasing the availability of rigorous computer science for all students;

(2) Recommendations for teaching standards and secondary certificate endorsements if necessary for teachers to deliver curriculum appropriate to meet the standards;

(3) Recommendations for units of instruction or courses in academic and vocational technical settings that complement any existing K-12 computer science and IT curricula where they are already established, especially the advanced placement computer science curricula and professional IT certifications; and

(4) Proposals for implementation of the recommendations over a period not to exceed four years and estimates of any associated additional costs.

(c) Nothing in this section requires adoption or implementation of any specific recommendation or any level of appropriation by the Legislature.

(d) Recognizing the importance of computer science instruction and how computer science instruction will assist students in their transition to post-secondary opportunities, prior to the 2020-2021 school year, the state board shall
adopt a policy detailing the appropriate level of computer
science instruction that shall be available to students at each
programmatic level.

e) The West Virginia Department of Education shall
develop and offer professional development opportunities
to ensure educators are equipped with the requisite
knowledge and skill to deliver computer science instruction
as outlined in this section. The department may partner with
high-quality computer science professional learning
providers in developing and offering the professional
development opportunities.

CHAPTER 92
(Com. Sub. for S. B. 329 - By Senators Cline and
Hamilton)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §18-2E-8g,
relating to agricultural education in high schools; setting forth
findings; encouraging agricultural programs be made
available to high school students; requiring State Department
of Education to assist in establishing agricultural programs in
certain instance; and requiring report to Legislative Oversight
Commission on Education Accountability when funding is the
primary reason that an agricultural program is not established.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.
§18-2E-8g. Creating successful careers through agricultural education.

(a) Findings and intent. — The Legislature finds that through agricultural education students are provided opportunities for leadership development, personal growth, and career success in the science, business, and technology of agriculture. Quality agricultural education instruction is delivered through three major components of classroom and laboratory instruction, supervised agricultural experience programs, and student leadership organizations such as the National Future Farmers of America (FFA) Organization. The Legislature further finds that opportunities to prepare for career success in the science, business, and technology of agriculture should be available to every West Virginia high school student.

(b) To provide opportunities for all state high school students to prepare for successful careers in agriculture and related fields, beginning in the 2020-2021 school year, school districts and multicounty vocational centers are encouraged to make available agricultural programs to high school students, including, but not limited to, such programs that would allow for and support the establishment of a local FFA chapter. Upon the request of any district or multicounty vocational center that does not have an agricultural program, the State Department of Education shall assist the district or multicounty vocational center in establishing agricultural programs available to high school students in the district. To the extent that funding is the primary reason that an agricultural program is not established, the State Department of Education shall report the same to the Legislative Oversight Commission on Education Accountability.
CHAPTER 93

(S. B. 605 - By Senators Rucker, Bosso, Maroney, Tarr, Baldwin, Cline and Sypolt)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §18-2-25a and §18-2-25b of the Code of West Virginia, 1931, as amended, all relating to enhancing safety of athletes participating in interscholastic athletics at a school that is a member of the West Virginia Secondary School Activities Commission; modifying qualifications of athletic trainers and physical therapists for certain purposes; requiring the Secondary School Activities Commission to submit certain head injury and concussion-related reports to the Legislative Oversight Commission on Health and Human Resources Accountability; providing that schools that do not follow established protocol on concussions and head injuries in interscholastic athletics are subject to disciplinary actions by the Secondary School Activities Commission; and providing that schools that do not follow the requirements of their emergency action plans for athletics are subject to disciplinary actions by the Secondary School Activities Commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25a. Management of concussions and head injuries in athletics at West Virginia Secondary School Activities Commission member high school or middle school.

(a) The Legislature makes the following findings:
(1) Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The Centers for Disease Control and Prevention estimates that as many as 3.9 million sports-related and recreation-related concussions occur in the United States each year;

(2) A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death is significant when a concussion or head injury is not properly evaluated and managed;

(3) Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally functions;

(4) Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other or with obstacles;

(5) Concussions occur with or without loss of consciousness, but the vast majority occur without loss of consciousness;

(6) The interscholastic athlete who continues to play or practice with a concussion or symptoms of head injury is especially vulnerable to greater injury and even death; and

(7) Even with generally recognized return-to-play-and-practice standards for concussion and head injury, some affected interscholastic athletes are prematurely returned to play or practice resulting in increased risk of physical injury or death to the athletes in the state of West Virginia.

(b) For the purposes of this section, “interscholastic athlete” means any athlete who is participating in interscholastic athletics at a high school or middle school that is a member of the West Virginia Secondary School Activities Commission. “Licensed health care professional”
means a health care provider whose licensed scope of practice includes the ability to diagnose and treat an injury or disease.

(c) The West Virginia Secondary School Activities Commission shall promulgate rules pursuant to §18-2-25 of this code that address concussions and head injuries in interscholastic athletes: Provided, That prior to state board approval and notwithstanding the exemption provided in §29A-1-3 of this code, the state board shall submit the rule to the Legislative Oversight Commission on Education Accountability pursuant to §29A-3B-9 of this code.

(d) The rules required by this section shall include, but are not limited to, the following:

(1) Guidelines and other pertinent information to inform and educate appropriate school administrators, coaches, interscholastic athletes, and their parents or guardians of the nature and risk of concussion and head injury including the risks of continuing to play or practice after a concussion or head injury;

(2) A concussion and head injury information sheet that shall be signed and returned by the interscholastic athlete and the athlete’s parent or guardian on an annual basis before the interscholastic athlete begins practice or competition;

(3) A requirement that each head coach of an interscholastic sport at a high school or middle school who is a member of the West Virginia Secondary School Activities Commission complete a commission-approved concussion and head injury recognition and return-to-play protocol course annually;

(4) A requirement that an interscholastic athlete who is suspected by a licensed health care professional or by his or her head coach or licensed or registered athletic trainer of
having sustained a concussion or head injury in a practice
or game shall be removed from competition at that time;

(5) A requirement that an interscholastic athlete who has
been removed from play or practice may not return to play
or practice until the athlete is evaluated by a licensed health
care professional trained in the evaluation and management
of concussions and receives written clearance to return to
play and practice from the licensed health care professional;

(6) A list of the respective categories of licensed health
care professionals including, but not limited to, licensed
physical therapists and licensed or registered athletic
trainers who, if properly trained in the evaluation and
management of concussions, are authorized to provide
written clearance for the interscholastic athlete to return to
play; and

(7) A requirement that all member schools must submit
a report to the West Virginia Secondary School Activities
Commission within 30 days of an interscholastic athlete
suffering or being suspected of suffering a concussion or
head injury in a practice or game. The report must state
whether an evaluation by a licensed health care professional
verified that a concussion or head injury was actually
suffered, whether the athlete received written clearance to
return to play or practice and, if written clearance was given,
the number of days between the incident and the actual
return to play or practice. If written clearance to return to
play is given after 30 days of the incident, a report update
shall be submitted. The West Virginia Secondary School
Activities Commission shall compile and submit the reports
to the appropriate state and national organization or
agencies to analyze and make determinations on whether
the rule required by this section needs to be amended or if
equipment worn by interscholastic athletes needs to be
changed accordingly. The West Virginia School Activities
Commission also shall submit the reports to the Legislative
Oversight Commission on Health and Human Resources
Accountability.
(e) Any member school not complying with the requirements of this section, and rules promulgated thereof, shall be subject to the disciplinary actions ordered by the West Virginia Secondary School Activities Commission: Provided, That the West Virginia Secondary School Activities Commission shall promulgate rules to establish guidelines for noncompliance and related disciplinary actions: Provided, however, That prior to state board approval and notwithstanding the exemption provided in §29A-1-3 of this code, the state board shall submit the rule to the Legislative Oversight Commission on Education Accountability pursuant to §29A-3B-9 of this code.

§18-2-25b. Emergency action plans for athletics.

(a) No later than August 1, 2017, the West Virginia Secondary School Activities Commission shall promulgate rules to establish guidelines for emergency action plans for athletics designed to respond to athletic injuries that occur on school property during school-sponsored athletic events. The rules shall address, at a minimum:

1. Protocols for practices and for games;
2. Directives for personnel or equipment which should be available on sports fields or in school buildings for both girls’ and boys’ teams; and
3. Training needed for school or volunteer personnel on an as-needed basis.

(b) All member schools shall submit an emergency action plan for athletics to the West Virginia Secondary School Activities Commission and their county boards of education by December 31, 2017: Provided, That the county boards shall keep the emergency plan of each school in the county on file and, unless otherwise provided for, provide a copy of each school’s emergency action plan for athletics to each local emergency response agency that has a role in the plan.
(c) Any person licensed by, or certified or registered in, this state to provide health care or professional health care services who renders services of a medical nature to students under this section, who has an agreement with a county board of education that defines the scope of his or her duties as such, and for which no remuneration is demanded or received, is not liable for any civil damages as a result of rendering such services, or as a result of any act or failure to act in providing or arranging further medical treatment.

(1) The limitation of liability only applies if the services are provided in accordance with acceptable standards of care and the licensed health care provider is not grossly negligent or does not demonstrate willful misconduct.

(2) Any liability is limited to the applicable limits of the professional liability insurance provided by the State Board of Risk and Insurance Management in effect at the time.

(3) Nothing in this subsection nullifies the immunity from civil liability as granted pursuant to §55-7-15 of this code or federal law except to the extent to which the actions are covered within the applicable limits of the professional liability insurance provided by the State Board of Risk and Insurance Management pursuant to this section and in effect at the time.

(d) Any member school not complying with the requirements of this section, and rules promulgated thereof, shall be subject to the disciplinary actions ordered by the West Virginia Secondary School Activities Commission: Provided, That the West Virginia Secondary School Activities Commission shall promulgate rules to establish guidelines for noncompliance and related disciplinary actions: Provided, however, That prior to state board approval and notwithstanding the exemption provided in §29A-1-3 of this code, the state board shall submit the rule to the Legislative Oversight Commission on Education Accountability pursuant to §29A-3B-9 of this code.
CHAPTER 94

(Com. Sub. for S. B. 632 - By Senators Maynard, Azinger, Blair, Boso, Cline, Roberts, Rucker, Smith, Sypolt, Tarr, Trump and Jeffries)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-48; to amend said code by adding thereto a new section, designated §18-20-11; and to amend and reenact §18A-2-8 of said code, all relating to improving student safety; requiring safety and security measures of each school facility be upgraded when necessary to ensure, to the best of the county board’s ability, the safety of students; creating Safe Schools Fund and providing for distribution of funds subject to appropriation; requiring video cameras capable of audio recording in certain public special education classrooms upon appropriation of funds; designating principal as the custodian; requiring written explanation if there is an interruption in the operation of the video camera; setting forth required capabilities of the video camera; prohibited monitoring in certain areas; allowing video camera to not be in operation when students not present; providing for notice of placement; setting forth video retention and access requirements; providing that immunity from liability not waived and liability not created; providing limitations on use of video; providing for protection of confidentiality and identity of students not involved in incident; allowing appeals to state board; permitting funding from Safe School Fund and gifts, grants, or donations; authorizing state board rule; adding to justifications for which a school employee may be suspended or dismissed; providing duty and authority to provide safe and secure environment;
requiring reports on suspensions and dismissals of employees and database maintained by state superintendent of individuals suspended or dismissed for certain reasons.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

(a) Each county board of education and multicounty vocational center shall annually assess the safety and security of each of the school facilities within its boundaries. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board’s ability, the safety of the students within each facility. Each county board of education shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information from the county boards of education, and report the information to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, “safety and security measures” means action taken by a county board of education or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows, etc.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: Provided, That annually, the West Virginia Department of Education shall request an
appropriation based on the requests of the county boards of education. Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education and multicounty vocational centers, with the funding amount per school determined by dividing the total annual appropriation by the total number of public schools throughout the state. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived: Provided, however, That moneys distributed from this fund also may be used for the purposes of §18-20-11 of this code, relating to video cameras in certain special education classrooms. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state’s Consolidated Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.


(a) Upon appropriation of funds by the Legislature, a county board of education shall ensure placement of video cameras in self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) “Incident” means a raised suspicion by a teacher, aide, parent, or guardian of a child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

(A) An employee of a public school or school district; or
(B) Another student;

(2) “Self-contained classroom” means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy; and

(3) “Special education” means the same as defined in §18-20-1 et seq. of this code.

c) A county board of education shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom. The principal of the school shall be the custodian of the video camera, all recordings generated by the video camera, and access to those recordings pursuant to this section.

d)(1) Every public school that receives a video camera under this section shall operate and maintain the video camera in every self-contained classroom that is part of that school.

(2) If there is an interruption in the operation of the video camera for any reason, a written explanation should be submitted to the school principal and the county board explaining the reason and length for which there was no recording. The explanation shall be maintained at the county board office for at least one year.

e)(1) A video camera placed in a self-contained classroom shall be capable of:

(A) Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

(B) Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes;
(2) A video camera placed in a self-contained classroom shall not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes except for incidental monitoring of a minor portion of a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(3) A video camera placed in a self-contained classroom is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom pursuant to this section, the public school shall provide written notice of the placement to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom;

(2) The county board; and

(3) The school employee(s) who is assigned to work with one or more students in the self-contained classroom.

(g)(1) A public school shall retain video recorded from a camera placed under this section for at least three months after the date the video was recorded after which the recording shall be deleted or otherwise made unretrievable.

(2) If a person requests to view a recording under subsection (k) of this section, the public school shall retain the recording from the date of the request until:

(A)(i) Except as provided in §18-20-11(g)(2)(A)(ii) of this code, the person views the recording;

(ii) A person who requests to view a recording shall make himself or herself available for viewing the recording within 30 days after being notified by the public school that the person’s request has been granted; and
(B) Any investigation and any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(h) This section does not:

(1) Waive any immunity from liability of a public school district or employee of a public school district; or

(2) Create any liability for a cause of action against a public school or school district or employee of a public school or school district.

(i) A public school or school district shall not:

(1) Allow regular, continuous, or continual monitoring of video recorded under this section; or

(2) Use video recorded under this section for:

(A) Teacher evaluations; or

(B) Any purpose other than the promotion of the health, well-being, and safety of students receiving special education and related services in a self-contained classroom.

(j) Except as provided under subsections (k) and (l) of this section, a video recording of a student made under this section is confidential and shall not be released or viewed.

(k) Within seven days of receiving a request, a public school or school district shall allow viewing of a video recording by:

(1) A public school or school district employee who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district;
(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district;

(3) An employee of a public school or school district as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the public school or school district;

(4) A law-enforcement officer as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the law-enforcement agency; or

(5) The Department of Health and Human Resources as part of a child abuse and neglect investigation: Provided, That any access provided to the Department of Health and Human Resources pursuant to this subdivision shall comply with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

(l) When a video is under review as part of the investigation of an alleged incident, and the video reveals a student violating a disciplinary code or rule of the school, which violation is not related to the alleged incident for which the review is occurring, and which violation is not already the subject of a disciplinary action against the student, the student is not subject to disciplinary action by the school for such unrelated violation unless it reveals a separate incident as described in §18-20-11(b)(1) of this code.

(m) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or school district incidentally views a video recording under this section if the contractor or employee of a public school or school district is performing job duties related to the:
(1) Installation, operation, or maintenance of video equipment; or

(2) Retention of video recordings.

(n) This section does not limit the access of a student’s parent or legal guardian to a video recording regarding the student under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, or any other law.

(o) A public school or school district shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing under subsection (j) of this section, including, without limitation, blurring the face of the uninvolved student; and

(2) Provide procedures to protect the confidentiality of student records contained in a video recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, or any other law.

(p)(1) Any aggrieved person may appeal to the State Board of Education an action by a public school or school district that the person believes to be in violation of this section.

(2) The state board shall grant a hearing on an appeal under this subsection within 45 days of receiving the appeal.

(q)(1) A public school or school district may use funds distributed from the Safe Schools Fund created in §18-5-48 of this code to meet the requirements of this section.

(2) A public school or school district may accept gifts, grants, or donations to meet the requirements of this section.

(r) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify the
required shall address any unforeseen issues that might arise relating to the implementation of the requirements of this section.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee’s job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 et seq. of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee’s job, or child abuse may be
reassigned to duties which do not involve direct interaction
with pupils pending final disposition of the charges.

(d) A county board of education has the duty and
authority to provide a safe and secure environment in which
students may learn and prosper; therefore, it may take
necessary steps to suspend or dismiss any person in its
employment at any time should the health, safety, and
welfare of students be jeopardized or the learning
environment of other students has been impacted.

(e) It shall be the duty of any county superintendent to
report any employee suspended or dismissed in accordance
with this section, including the rationale for the suspension
or dismissal, to the state superintendent. The state
superintendent shall maintain a database of all individuals
suspended or dismissed for jeopardizing the health, safety,
and welfare of students, or for impacting the learning
environment of other students. The database shall also
include the rationale for the suspension or dismissal. The
database shall be confidential and shall only be accessible
to county human resource directors, county superintendents,
and the state superintendent.

CHAPTER 95

(S. B. 670 - By Senators Rucker, Blair, Azinger,
Cline, Maynard, Plymale, Roberts and Trump)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §18-30-2, §18-30-3, §18-30-4, and
§18-30-7 of the Code of West Virginia, 1931, as amended, all
relating to the West Virginia College Prepaid Tuition and
Savings Program; expanding eligible educational institutions
to include a private or religious primary, middle, or secondary school; and changing Board of the College Prepaid Tuition and Savings Program membership.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-2. Legislative findings and purpose.

The Legislature finds and determines that enhancing the accessibility and affordability of education for all citizens of West Virginia will promote a well-educated and financially secure population to the ultimate benefit of all citizens of West Virginia, and that assisting individuals and families in planning for future educational expenses by making the tax incentives in 26 U.S.C. § 529 available to West Virginians is one of the proper governmental functions and purposes of the state.

The Legislature also finds that continuation of the prepaid tuition plan and creation of a savings plan will further those governmental functions and purposes. It is, therefore, the legislative intent of this article to continue the prepaid tuition plan and to enhance the plan by authorizing the creation of a savings plan so that more students may attend eligible educational institutions.

§18-30-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. § 529:

(a) “Account” means a prepaid tuition account or a savings plan account established in accordance with this article.

(b) “Account owner” means the individual, corporation, association, partnership, trust, or other legal entity who
enters into a prepaid tuition contract and is obligated to make payments in accordance with the prepaid tuition contract or who enters into a savings plan contract and invests money in a savings plan account.

(c) “Beneficiary” means the individual designated as a beneficiary at the time an account is established, the individual designated as the beneficiary when beneficiaries are changed, the individual entitled to receive distributions from an account, and any individual designated by the account owner, his or her agent, or his or her estate in the event the beneficiary is unable or unwilling to receive distributions under the terms of the contract.

(d) “Board” means the Board of Trustees of the College Prepaid Tuition and Savings Program as provided in §18-30-4 of this code.

(e) “Distribution” means any disbursement from an account in accordance with 26 U.S.C. § 529.

(f) “Eligible educational institution” means an institution of higher education or a private or religious primary, middle, or secondary school that qualifies under 26 U.S.C. § 529 as an eligible educational institution.

(g) “Prepaid tuition account” means an account established by an account owner pursuant to this article in order for the beneficiary to apply distributions in accordance with the prepaid tuition plan.

(h) “Prepaid tuition contract” means a contract entered into by the board and an account owner establishing a prepaid tuition account.

(i) “Prepaid tuition plan” means the plan that contractually guarantees payment of tuition at a West Virginia public, private, or religious eligible educational institution.
(j) “Program” means the West Virginia College Prepaid Tuition and Savings Program established under this article.

(k) “Qualified education expenses” mean education expenses permitted under 26 U.S.C. § 529 for enrollment or attendance of a beneficiary at an eligible educational institution.

(l) “Savings plan” means the plan that allows account distributions for qualified higher educational expenses and tuition at private or religious primary, middle, and secondary schools.

(m) “Savings plan account” means an account established by an account owner pursuant to this article in order for the beneficiary to apply distributions toward qualified higher education expenses and tuition expenses at eligible educational institutions.

(n) “Savings plan contract” means a contract entered into by the board or its agent, if any, and an account owner establishing a savings plan account.

(o) “Treasurer” means the West Virginia State Treasurer.

(p) “Tuition” means the quarter, semester, or term charges imposed by an eligible educational institution and all mandatory fees required as a condition of enrollment by all students for full-time attendance.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

(a) The West Virginia College Prepaid Tuition and Savings Program is continued. The program consists of a prepaid tuition plan and a savings plan.

(b) The Board of the College Prepaid Tuition and Savings Program is continued, and all powers, rights, and responsibilities of the Board of Trustees of the Prepaid
Tuition Trust Fund are vested in the Board of the College Prepaid Tuition and Savings Program.

(c) The board consists of eight members and includes the following:

(1) The State Treasurer, or his or her designee;

(2) The State Superintendent of Schools, or his or her designee;

(3) A representative of the Higher Education Policy Commission, who may or may not be a member of the Higher Education Policy Commission, appointed by the commission who serves as a voting member of the board;

(4) A representative of the Council for Community and Technical College Education, who may or may not be a member of the Council for Community and Technical College Education, appointed by the council who serves as a voting member of the board; and

(5) Four other members, appointed by the Governor, with knowledge, skill and experience in an arts, academic, business, or financial field, to be appointed as follows:

(A) Two private citizens not employed by, or an officer of, the state or any political subdivision of the state; and

(B) Two members representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia Independent Colleges and Universities.

(d) The members representing the interests of private institutions of higher education are appointed by the Governor with the advice and consent of the Senate.

(e) Only state residents are eligible for appointment to the board.
(f) Members appointed by the Governor serve a term of five years and are eligible for reappointment at the expiration of their terms. If there is a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(g) Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor. Members of the board serve without compensation. The Treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the College Prepaid Tuition and Savings Program Administrative Account, and are made at the same rate paid to state employees.

(h) The Treasurer may provide support staff and office space for the board.

(i) The Treasurer is the chairman and presiding officer of the board, and may appoint the employees the board considers advisable or necessary. A majority of the members of the board constitute a quorum for the transaction of the business of the board.


(a) The board may establish a Savings Plan Trust, and may establish a Savings Plan Trust Fund Account, titled the Savings Plan Trust Fund, within the accounts held by the Treasurer or with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, or any other person for the purpose of managing and investing the trust fund. Assets of the Savings Plan Trust are held in trust for account owners and beneficiaries.

(b) The Savings Plan Trust Fund shall receive all moneys from account owners on behalf of beneficiaries of savings plan contracts or from any other source, public or private. Earnings derived from the investment of the
moneys in the college Savings Trust Fund shall remain in
the fund, held in trust in the same manner as contributions,
except as refunded, applied for purposes of the
beneficiaries, and applied for purposes of maintaining and
administering the savings plan.

(c) The corpus, assets, and earnings of the Savings Plan
Trust Fund do not constitute public funds of the state and
are available solely for carrying out the purposes of this
article. Any contract entered into by or any obligation of the
board on behalf of and for the benefit of the savings plan
does not constitute a debt or obligation of the state, but is
solely an obligation of the Savings Plan Trust Fund. The
state has no obligation to any designated beneficiary or any
other person as a result of the savings plan. All amounts
payable from the Savings Plan Trust Fund are limited to
amounts available in the fund.

(d) Nothing in this article or in any savings plan contract
is a promise or guarantee that the distributions available for
a beneficiary will cover the cost of qualified education
expenses at an eligible educational institution, or as a
promise or guarantee of admission to, continued enrollment
in, or graduation from an eligible education institution.

(e) The requirements of the provisions of §32-1-101 et
seq. of this code do not apply to the sale of a savings plan
contract by the board, its employees, and agents.

(f) The savings plan and any Savings Plan Trust Fund
shall continue in existence until terminated by the
Legislature as it determines or by the board upon
determining that continued operation is infeasible. Upon
termination of the plan, the balances of savings plan
accounts, less any distributions, refunds, fees, charges, and
penalties, are sent to account owners, to the extent possible,
and any unclaimed assets in the program shall revert to the
state in accordance with the Uniform Unclaimed Property
Act in §36-8-1 et seq. of this code.
(g) The state pledges to account owners and beneficiaries of the savings plans that the state will not limit or alter the rights under this article which are vested until the obligations are met and discharged. However, nothing in this subsection prohibits the Legislature from discontinuing or terminating a savings plan.

(h) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the savings plan trust fund is subject to taxation by the state or any of its political subdivisions.

(i) Notwithstanding any provision of this code to the contrary, money in the Savings Plan Trust Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.

CHAPTER 96

(S. B. 672 - By Senators Rucker, Blair, Azinger, Cline, Maynard, Roberts, Romano, Stollings and Trump)

[Passed March 7, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §18-9D-21 of the Code of West Virginia, 1931, as amended, relating to authorizing the School Building Authority to promulgate legislative rules; authorizing School Building Authority rules relating to
requirements governing the Comprehensive Educational Facility Plan, funding of School Building Authority projects, School Building Authority school planning and design criteria, School Building Authority project administration and review, School Building Authority contract and agreements, School Building Authority reporting procedures, and the School Access Safety Act, by deleting certain provisions in series two through five and series seven that are procedural in nature, deleting series one in its entirety due to its content being solely procedural and declaring it enrolled as a procedural rule, and deleting series six in its entirety due to its content being solely procedural.

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

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

**§18-9D-21. Authorizing rules of School Building Authority.**

1 (a) The legislative rule filed in the State Register on September 27, 2007, relating to the School Building Authority (School Building Authority requirements for Comprehensive Educational Facility Plan rule), is repealed and enrolled as a procedural rule.

2 (b) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (funding School Building Authority projects rule), is authorized.

3 (c) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority school planning and design criteria rule), is authorized.

4 (d) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority project administration and review rule), is authorized.
(e) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority contract and agreements rule), is authorized.

(f) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority reporting procedures rule), is repealed.

(g) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Access Safety Act rule), is authorized.

CHAPTER 97


[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §18-2-7d and §18-2-42; to amend and reenact section §18B-3C-4 of said code; to amend said code by adding thereto a new article, designated §21-1E-1, §21-1E-2, §21-1E-3 and §21-1E-4; to amend and reenact §29-3-9 of said code; and to amend said code by adding thereto a new article, designated §30-1E-1, §30-1E-2, §30-1E-3 and §30-1E-4, all relating to requiring a state board rule that adopts a program of instruction in general workforce and career preparedness; providing career and technical education program information to students and parents; requiring transcript of certain post-secondary credits earned by public school students to be provided to them; ensuring that certain career technical education students are
eligible to participate in the graduation ceremony in the same manner as all other students in the district; elevating priority on program integration to meet region and state labor market needs by community and technical college/career and technical education consortia; requiring the facilitating institution to annually submit the Carl D. Perkins local planning guide to the Council for Community and Technical College Education and State Board of Education; providing for joint State Board and Council for Community and Technical College Education guidelines on administration of the code section requiring the formation of community and technical college/career and technical education consortia; providing joint responsibility of State Superintendent and Chancellor for certain activities and reporting; requiring standards and procedures for recognizing career technical training acquired in public schools, apprenticeships and training programs toward occupational testing, certification and/or licensure; establishing purpose and intent; providing definitions; requiring rules providing standards and procedures be proposed by Commissioner of Labor, State Fire Commission, State Fire Marshal and the professions and occupations licensing boards and commissions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7d. Program in workforce preparedness.

(a) The Legislature finds that, in addition to specialized skills relating to specific professions and trades, students will be better prepared to enter the workforce and succeed in their chosen fields of employment or education by having the opportunity to participate in training related to general workforce preparedness, productive workplace skills and processes, time management and efficiency, and teamwork and leadership competencies in the workplace. The Legislature further finds that employers in the state are the
best source for articulating the general skills and attributes
they, in common, seek in future employees and that
employers may collaborate in the development of a graduate
profile incorporating these skills and attributes.

(b) The state board shall promulgate a rule pursuant to
§29A-3B-1 et seq. of this code that adopts a program of
instruction in general workforce and career preparedness for
all students. The program of instruction shall include
guidelines for schools working through their local school
improvement councils and business partners to
communicate to students the common skills and attributes
sought by employers in prospective employees.

§18-2-42. Providing career and technical education program
information to students and parents; transcript of post-
secondary credit; career technical education student
participation in graduation ceremony.

(a) The State Board of Education, the Council for
Community and Technical College Education, and the
Department of Commerce shall coordinate efforts for the
collection and dissemination of information on the career
and technical cluster and major programs of study
established for the public schools including, but not limited
to, the following:

(1) Programs of study and the curriculum of courses at
the secondary and post-secondary level established pursuant
to §18B-3C-4 of this code that lead to an industry-
recognized credential, a certificate of applied science degree
or an associate degree that satisfy a workforce need;

(2) Programs of study and the curriculum of courses at
the secondary level recognized pursuant to §21-1E-1 et seq.
of this code, §29-3-9 of this code and §30-1E-1 et seq. of
this code as satisfying a portion of the requirements for an
apprenticeship and other employer sponsored training
programs, as well as any associated programs of study and
the curriculum of courses at the post-secondary level that
20 enable the student to also satisfy the requirements for an
21 associate degree; and

22 (3) The EDGE program, established by §18-13-1 et seq.
23 of this code, which provides the opportunity for the student
24 to obtain articulated credits that count toward high school
25 graduation requirements, as well as count toward the
26 student’s achievement of a certificate or associate degree.

27 (b) The dissemination of the information on programs
28 of study as provided in subsection (a) of this section shall
29 be easily accessible to all students and their parents
30 beginning in the middle school grades.

31 (c) All post-secondary credits earned by a public school
32 student through the EDGE program and any other
33 articulated credit and dual credit program shall be
34 transcripted and provided to the student by the post-
35 secondary institution at which the credit was earned.

36 (d) Any career technical education student who fulfills
37 the high school graduation requirements required of other
38 students in the district in which he or she is enrolled shall be
39 eligible to participate in the graduation ceremony in the
40 same manner as all other students in the district.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3C. COMMUNITY AND TECHNICAL
COLLEGE SYSTEM.

§18B-3C-4. Community and technical college/career and
technical education consortia planning districts.

1 (a) Unless otherwise designated, the presidents of the
2 community and technical colleges facilitate formation of
3 community and technical college/career and technical
4 education consortia in the state. Each consortium includes
5 representatives of community and technical colleges, public
6 career and technical education centers and state
7 baccalaureate institutions offering associate degrees. The
consortium is responsible for carrying out the following actions:

(1) Completing a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short- and long-term workforce development needs of the district and to identify the high-demand, high-wage occupations within the service district and develop programs of study, based on the findings, that consist of a curriculum of courses leading to an industry-recognized credential, a certificate of applied science degree or an associate degree;

(2) Coordinating efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decision-making. The priority of each consortium is to identify the high-demand, high-wage occupations within the service district and, in conjunction with the public schools, develop integrated secondary and post-secondary programs of study that lead to an industry-recognized credential, a certificate of applied science degree or an associate degree;

(3) Developing integrated secondary and post-secondary programs of study that lead to an industry-recognized credential, a certificate of applied science degree or an associate degree to satisfy a workforce need as determined by the Department of Commerce. The Department of Commerce shall on occasion, but at least annually, provide written notification to the State Board of Education and the West Virginia Council for Community and Technical College Education a determination of areas of workforce need;

(4) Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional and state labor market needs, including implementing seamless programs of study, including West
Virginia EDGE, Advanced Career Education, Registered Apprenticeships and any program that allows students to earn college credit while they are still in high school;

(5) Ensuring that the programs of study include coherent and rigorous content aligned with challenging academic standards and relevant career and technical education content. The programs shall provide for student movement through a coordinated, nonduplicative progression of courses that align secondary education with community and technical college education to prepare students to succeed at the community and technical college level and in high-wage, high-demand occupations;

(6) Planning and developing a unified effort between the community and technical colleges and public career and technical education to meet the documented workforce development needs of the district and state through individual and cooperative programs; shared facilities, faculty, staff, equipment and other resources; and the development and use of distance learning and other education technologies;

(7) Collaborating and developing jointly the collaborative programming for adults between the community and technical colleges and the public career and technical centers. The focus of these collaborative efforts is the development of advanced skill programming that builds on the secondary curriculum and allows career and technical education graduates to acquire more in-depth preparation in their occupational area of interest;

(8) As a consortium, regularly reviewing and revising curricula to ensure that the workforce needs are met; developing new programs and phasing out or modifying existing programs, as appropriate, to meet such needs; and streamlining procedures for designing and implementing customized training programs;
Planning and implementing integrated professional development activities for secondary and post-secondary faculty, staff and administrators;

Ensuring that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialing;

Assessing student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance more rapidly without repeating course work in which they already possess competency;

Cooperating with workforce investment boards to establish one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training, and secure employment, and that allow employers to locate available workers;

Increasing the integration of adult literacy, adult basic education, federal Workforce Innovation and Opportunity Act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment, including cooperating with the State Department of Education to provide adult basic education programs on each community and technical college campus in the state where developmental education services are provided; and

Establishing a single point of contact for employers and potential employers to access education and training programs throughout the district.

The community and technical college education consortium shall cooperate with the regional workforce investment board in the district and shall participate in any
development or amendment to the regional workforce investment plan.

(c) To carry out the provisions of this section, community and technical college/career and technical education consortia planning districts are established and defined as follows:

(1) Northern Panhandle District includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia Northern Community and Technical College.

(B) Participating institutions include West Virginia Northern Community and Technical College; John Marshall High School; Cameron High School; John D. Rockefeller IV Career Center; and other public career and technical centers offering post-secondary programs.

(2) North Central West Virginia District includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.

(A) The facilitating institution is Pierpont Community and Technical College.

(B) Participating institutions include Pierpont Community and Technical College; Glenville State College; Randolph County Technical Center; Monongalia County Technical Education Center; United Technical Center; Marion County Technical Center; Fred W. Eberle Technical Center; Calhoun Gilmer Career Center; Taylor County Technical Center; and other public career and technical centers offering post-secondary programs.

(3) Mid-Ohio Valley District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.
(A) The facilitating institution is West Virginia University at Parkersburg.

(B) Participating institutions include West Virginia University at Parkersburg; Roane-Jackson Technical Center; Wood County Technical Center; Mid-Ohio Valley Technical Institute and other public career and technical centers offering post-secondary programs.

(4) Potomac Highlands District includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is Eastern West Virginia Community and Technical College.

(B) Participating institutions include Eastern West Virginia Community and Technical College; South Branch Career and Technical Center; Mineral County Technical Center; and other public career and technical centers offering post-secondary programs.

(5) Shenandoah Valley District includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is Blue Ridge Community and Technical College.

(B) Participating institutions include Blue Ridge Community and Technical College; James Rumsey Technical Institute; and other public career and technical centers offering post-secondary programs.

(6) Advantage Valley District includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution for Cabell, Mason and Wayne counties is Mountwest Community and Technical College. The facilitating institution for Clay, Fayette, Kanawha and Putnam counties is BridgeValley Community and Technical College.
(B) Participating institutions include Mountwest Community and Technical College; BridgeValley Community and Technical College; Carver Career and Technical Education Center; Garnet Career Center; Ben Franklin Career and Technical Center; Putnam Career and Technical Center; Cabell County Career-Technology Center; Mason County Career Center; and other public career and technical centers offering post-secondary programs.

(7) Southern Mountains District includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.

(A) The facilitating institution is Southern West Virginia Community and Technical College.

(B) Participating institutions include Southern West Virginia Community and Technical College; Boone County Career and Technical Center; Wyoming County Career and Technical Center; Ralph R. Willis Career and Technical Center; McDowell County Career and Technology Center; Mingo Extended Learning Center; and other public career and technical centers offering post-secondary programs.

(8) Southeastern District includes Raleigh, Summers, Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.

(A) The facilitating institution is New River Community and Technical College.

(B) Participating institutions include New River Community and Technical College; BridgeValley Community and Technical College; Bluefield State College; Academy of Careers and Technology; Fayette Institute of Technology; Summers County High School; Monroe County Technical Center; Mercer County Technical Education Center; Nicholas County Career and Technical Center; and other public career and technical centers offering post-secondary programs.
(9) Cochairs preside over each consortium as follows:

(A) The president of the facilitating community and technical college, or his or her designee; and

(B) A career and technical education center administrator, or his or her designee, representing one of the participating institutions and selected by the consortium administrative leaders.

(d) In the role of the facilitating institution of the consortium, the college:

(1) Communicates to the council and state board;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which includes the seven areas of comprehensive community and technical college education delivery as required by §18B-3C-6 of this code;

(3) Facilitates development of a statement of commitment signed by all participating institutions in the region setting forth how community and technical college education will be delivered; and

(4) Submits annually the Carl D. Perkins local planning guide to the council and the state board.

(e) The state board and council shall jointly promulgate guidelines for the administration of this section. The guidelines shall be affirmatively adopted by both the board and the council. At a minimum, such guidelines shall provide for the following:

(1) Participating institutions are not subordinate to the facilitating institution but shall sign the statement of commitment to participate.

(2) Integrated secondary and post-secondary programs of study that lead to an industry-recognized credential, a
(3) The programs of study must meet the requirements of the accrediting entity for the community and technical college awarding the associate degrees;

(4) That partnership agreements must be approved by the State Superintendent of Schools and the Chancellor for the Council for Community and Technical College Education; and

(5) Any other provisions necessary to effectuate the purposes of this section.

(f) The State Superintendent of Schools and the Chancellor for the Council for Community and Technical College Education are responsible for annually evaluating the progress made in meeting the goals for each consortium through the development and collection of performance indicator data.

(g) The State Superintendent of Schools and the Chancellor for the Council for Community and Technical College Education shall annually report to the Governor and the Legislative Oversight Commission on Education Accountability on the implementation of this section.

CHAPTER 21. LABOR.

ARTICLE 1E. CAREER TRAINING EDUCATION AND APPRENTICESHIPS.

§21-1E-1. Declaration of purpose.

The provisions of this article are intended to facilitate certification and/or licensure for workers who acquire training via career technical education provided by West Virginia public schools or an employer-sponsored apprenticeship and employer-sponsored training programs.

§21-1E-2. Definitions.
As used in this article and the legislative rules promulgated pursuant to this article:

“Apprentice” means someone who is enrolled in an apprenticeship program.

“Apprenticeship program” means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

“Employer sponsored training program” means a program approved in accordance with a rule promulgated pursuant to authority established in §21-1E-4 of this code.

"License" means a valid and current certification or license issued by the Commissioner of Labor in accordance with the provisions of this article.

“Career technical education” means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

§21-1E-3. Recognition of training and apprenticeships.

Beginning July 1, 2019, applicants for certification or licensure shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure in the same occupation in accordance with the standards and procedures authorized in accordance with this article.

§21-1E-4. Rule-making authority.

The Commissioner of Labor shall, after consultation with the State Superintendent of Schools, propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, for the implementation and
enforcement of the provisions of this article. The rules shall provide at least the following:

(1) Standards and procedures for recognizing training hours acquired through career technical education provided by West Virginia public schools and applying those hours to requirements for testing and/or certification and/or licensure; and

(2) Standards and procedures for recognizing training hours acquired through apprenticeship programs and employer-sponsored training programs and applying those hours to requirements for testing and/or certification and/or licensure.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.


(a) The State Fire Commission may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of its office.

(b) The State Fire Commission is responsible for fire programs within this state, including the State Fire Marshal’s office, training, uniform standards and certification, finance and planning and fire prevention.

(c) All state and area training and education in fire service shall be coordinated by the State Fire Commission. The State Fire Marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commission.

(d) The State Fire Commission may make recommendations to the State Insurance Commissioner regarding town classifications for fire insurance rates.
(e) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(f) The State Fire Commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: Manpower needs; location of training centers; location of fire prevention and control units; communications; fire fighting facilities; water sources; vehicular needs; public education and information; public participation; standardization in record keeping; evaluation of personnel; reporting of fire hazards; programs on mutual aid; location of public safety agencies; outline of fire prevention programs; and accessibility of fire prevention information.

(g) The State Fire Commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning and certification.

(h) The State Fire Marshal may accept, on behalf of the State Fire Commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions. The State Fire Marshal, acting on behalf of the State Fire Commission, may enter into, sign and execute any agreements and do and perform any acts that may be necessary, useful, desirable or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings and bequests received by the State Fire Marshal shall be deposited into the special account set forth in subsection (c), section twelve-b of this article, and the State Fire Marshal, with the approval of the State Fire Commission, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.
(i) The State Fire Commission shall establish standards and procedures by policy to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment and training;

(3) Certification;

(4) Training and education in fire service, subject to the rule-making requirements set forth in section five-d of this article; and

(5) The creation, operation and responsibilities of fire departments throughout the state.

(j) Beginning July 1, 2019, applicants for certification or licensure in accordance with the education and training programs under the respective jurisdictions of the State Fire Commission and the State Fire Marshal shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure by the State Fire Commission and the State Fire Marshal as applicable. The State Fire Commission and State Fire Marshal shall, after consultation with the State Superintendent of Schools, propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, for the implementation and enforcement of these provisions. The rules shall provide at least the following:

(1) Standards and procedures for recognizing training hours acquired through career technical education provided by West Virginia public schools and applying those hours to requirements for testing and/or certification and/or licensure; and
(2) Standards and procedures for recognizing training hours acquired through apprenticeship programs and employer-sponsored training programs and applying those hours to requirements for testing and/or certification and/or licensure.

As used in this subsection:

“Apprentice” means someone who is enrolled in an apprenticeship program.

“Apprenticeship program” means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

“Employer sponsored training program” means a program approved in accordance with a rule promulgated by the State Fire Commission or the State Fire Marshal under their respective authorities established in this code.

“License” means a valid and current certification or license issued by State Fire Commission or the State Fire Marshal for satisfactory completion of education and training programs under their respective jurisdictions.

“Career technical education” means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1E. CAREER TRAINING EDUCATION AND APPRENTICESHIPS.

§30-1E-1. Declaration of purpose.

The provisions of this article are intended to facilitate certification and/or licensure for workers who acquire training via career technical education provided by West Virginia public schools or an employer-sponsored apprenticeship and employer-sponsored training programs.
§30-1E-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

“Apprentice” means someone who is enrolled in an apprenticeship program.

“Apprenticeship program” means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

“Employer-sponsored training program” means a program approved in accordance with a rule promulgated by the respective board of examination or registration in accordance with their authority granted to by this chapter.

“License” means a valid and current certification or license issued by a regulatory board or commission in this chapter.

“Career technical education” means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

§30-1E-3. Recognition of training and apprenticeship programs.

Beginning July 1, 2019, applicants for certification or licensure pursuant to this chapter shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure in the same occupation in accordance with the standards and procedures authorized in accordance with this article.

§30-1E-4. Rule-making authority.

The licensing boards and commissions in this chapter shall, after consultation with the State Superintendent of
Schools, propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code for the implementation and enforcement of the provisions of this article. The rules shall provide at least the following:

1. Standards and procedures for recognizing training hours acquired through career technical education provided by West Virginia public schools and applying those hours to requirements for testing and/or certification and/or licensure.

2. Standards and procedures for recognizing training hours acquired through apprenticeship programs and employer-sponsored training programs and applying those hours to requirements for testing and/or certification and/or licensure.

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5E-8, relating to creating a new category of Innovation in Education grant program designated Innovation in Education/Mastery-Based; making findings and stating purpose and intent; providing definitions; delineating applicability of other Innovation in Education provisions of article; specifying duties of state board with respect to program; requiring participation in incubator process; prohibiting penalties for students who
transfer from mastery-based schools; and requiring
institutions of higher education to recognize and accept high
school diplomas on equal footing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5E. INNOVATION IN EDUCATION ACT.

§18-5E-8. Innovation in Education/Mastery-Based schools;
legislative findings, purpose and intent; definitions;
applicability of other provisions; state board duties for
implementation; student credentials upon transfer and
matriculation.

(a) The Legislature finds that when instruction is
delivered to a class of students at a uniform pace, some
students accumulate knowledge and skill deficits as they
progress through the curriculum which, particularly in the
STEM areas, limit their ability to be successful at higher
levels. This traditional time-based system of education
pushes students forward at the end of the allotted time
period even if they have not mastered the content fully. For
too many students, these accumulated deficits result in
required remediation prior to undertaking collegiate level
coursework or at least some gaps in the preparation of recent
high school graduates for the demands of the workplace.
Concurrently, this time-based system limits the educational
progress of students who do master the content more
quickly by not permitting them to move on to more
challenging material, elective subjects, or dual credit and
advanced placement courses that they have already
demonstrated their readiness to undertake.

The Legislature finds further that new approaches to
educational delivery that simultaneously address these
challenges are being implemented in some innovative
schools and school systems. These approaches use an
instructional delivery model where students progress as they
master the content, rather than when they receive at least the
minimum passing grade at the end of a set time period.
These approaches, typically referred to as mastery-based, proficiency-based or competency-based education, empower students who demonstrate content mastery to progress more quickly to higher levels and, consequently, allow additional attention to be given to meeting the needs of those who have not yet mastered the content. Because the shift to such models often requires fundamental changes in scheduling, assessment, grading, the award of credits and diplomas and other aspects of traditional schooling, implementation requires an intentional approach that engages multiple stakeholders in developing and executing a long-term plan. The statutes and policies designed to regulate the traditional time-based system may also create real or perceived barriers to a mastery-based approach. For these reasons, several states have established pilot programs specific to implementing these new approaches that provide developmental assistance, additional support and regulatory waivers when necessary for the pilot schools to make the transition.

(b) The purpose of this section is to create a separate category under this act, entitled Innovation in Education/Mastery-Based, for schools interested in undertaking the transition to mastery-based education. It is the intent of this section to establish a multistep process that assists these schools to develop a broader awareness and understanding of mastery-based education prior to application, assess the capacity and readiness of schools to proceed, allow several options for implementation or for opting-out of the application process, and create an network incubator process for continuing the support of schools designated as Innovation in Education/Mastery-Based schools following full application and grant award.

(c) For purposes of this section:

“Incubator process” means a process where schools that are willing and ready to begin implementing a mastery-based model of education form a network of not more than 20 mastery-based education schools. The schools in this
network will receive support for, including, but not limited to, program development, professional development, stakeholder education, establishing mastery assessment, coaching and on-going technical assistance. The incubator process will enable schools within the network to share information on their progress and setbacks, collaborate on innovative approaches, and provide data on student progress and best practices for the continued implementation of mastery-based education.

“Mastery-based education” means an education system designed to improve educational outcomes by advancing student mastery of content knowledge and skills through the following core principles:

(A) Student advancement upon mastery of a concept or skill;

(B) Competencies that include explicit, measurable, and transferable learning objectives that empower a student;

(C) Assessment that is meaningful and provides a positive learning experience for a student;

(D) Timely, differentiated support based on a student’s individual learning needs;

(E) Learning outcomes that emphasize competencies that include application and creation of knowledge along with the development of important skills and dispositions;

(F) Incorporating partnerships with post-secondary institutions and members of industry; and

(d) Other provisions of this article related to schools designated as Innovation in Education schools also apply to Innovation in Education/Mastery-Based schools unless otherwise specifically provided by this section, including, but not limited to, the following:
(1) Innovation in Education/Mastery-Based schools are not limited to the implementation of key innovational priorities in the five areas, *i.e.*, STEM, community school partnership, entrepreneurship, career pathways, and the arts, listed in §18-5E-1 of this code. References in this article to these areas relative to Innovation in Education application, designation, plan and evaluation for the purposes of this section means Innovation in Education/Mastery-Based and are applicable to Innovation in Education/Mastery-Based schools except as otherwise provided in this section: Provided, That nothing in this subdivision prohibits an Innovation in Education/Mastery-Based school from including an emphasis in one or more of the five listed areas in their mastery-based plan, nor prohibits a school previously designated as an Innovation in Education school from transitioning to mastery-based education under this section;

(2) The application, application review and state board rule pursuant to §18-5E-3 of this code for implementing Innovation in Education schools shall be modified to accommodate the multistep process for Innovation in Education/Mastery-Based schools consistent with the provisions of this section; and

(3) Legislative appropriations made for Innovation in Education/Mastery-Based schools shall be deposited in the Innovation in Education Fund created in §18-5E-7 of this code and may be used solely for the purposes of Innovation in Education/Mastery-Based schools consistent with this section.

(e) The state board shall perform the following activities for implementing the Innovation in Schools/Mastery-Based program:

(1) Establish an advisory committee including, but not limited to, public school professional educators, representatives of community and technical colleges, colleges and universities, employers and organizations
advocating for education on behalf of employers, parents and Department of Education staff and others who may possess knowledge of mastery-based education. The advisory committee shall advise and assist the state board in carrying out the activities under this section, including, but not limited to, building a broader awareness and understanding of mastery-based models of education, identifying potential roadblocks and potential solutions to implementing mastery-based models of education, recognizing student mastery upon matriculation or transfer, establishing evaluative criteria to assess the readiness of schools to undertake the transition to mastery-based education, reviewing applications of schools interested in implementing mastery-based education and making recommendations to the state board and developing an incubator process for supporting the network of schools willing and ready to begin the transition to a mastery-based education model;

(2) Promote a broader awareness and understanding in mastery-based education among teachers, administrators, parents, students, business leaders and policymakers;

(3) Develop and publish an application designed specifically for schools interested in initial consideration for becoming an Innovation in Education/Mastery-Based school. The application for initial consideration is separate from the application for Innovation in Education designation pursuant to §18-5E-3 of this code and may not require an Innovation in Education plan pursuant to §18-5E-4 of this code. In addition, the application process shall:

(A) Include the evaluative criteria that will be used to assess the readiness of schools to undertake the transition to mastery-based education. Within the evaluative criteria, the state board may include an intent to select any proportion of schools of diverse demographic character and programmatic levels for participation in the initial network of mastery-based education schools; and
(B) Be open to all schools including those currently designated as Innovation in Education schools who are interested in adding mastery-based education to their existing plan;

(4) Establish a process, which may include an on-site visit to schools which apply for initial consideration for becoming an Innovation in Education/Mastery-Based school to assess the readiness of applicants to undertake the transition to mastery-based education. This process shall be used to assist in identifying and recommending to the state board an initial network of not more than 20 schools who are ready to undertake the transition to mastery-based education.

(5) Establish a process to deepen the understanding of mastery-based education of the schools selected for the initial network of schools. The process may include, but is not limited to, visits to schools that have implemented an education system that incorporates the core principals of mastery-based education as defined in this section.

(6) For schools selected for the initial network who elect to proceed with the implementation of a mastery-based model of education, provide technical assistance to prepare an Innovation in Education/Mastery-Based plan and operational agreement with their county board as provided in §18-5E-4 and §18-5E-5 of this code. Schools in the initial network may:

(A) Opt-out of further participation prior to submission of an Innovation in Education/Mastery-Based plan and agreement;

(B) Apply for an Innovation in Education/Mastery-Based grant for the transition to a mastery-based education model within a limited subject area or areas across multiple grade levels, such as, but not limited to, mathematics or STEM related academic and technical programs of study; or
(C) Apply for an Innovation in Education/Mastery-Based grant for the transition to a school-wide mastery-based education model or other configurations as may be determined practicable by the state board.

(7) In addition to any applicable measures of success required for an Innovation in Education plan pursuant to §18-5E-4 of this code, an Innovation in Education/Mastery-Based plan shall include a subset of uniform measures of success in improving education outcomes by advancing student mastery of the content knowledge and skills.

(8) Implement an incubator process to support the network of schools that are awarded Innovation in Education/Mastery-Based education grants pursuant to this article.

(f) In addition to any grant or other financial assistance awarded to a school designated as an Innovation in Education/Mastery-Based school in accordance with this section, the school shall participate in the incubator process established under this section.

(g) A student enrolled at a school that establishes mastery-based education who then transfers to another school within the county or in any other county in this state that does not have a mastery-based education program, may not be penalized by being required to repeat course work covering content that the student has successfully mastered or by any other penalty related to the student’s previous attendance in the mastery-based education program.

(h) An institution of higher education in this state shall recognize and accept credentials and diplomas awarded to students indicating a level of content mastery gained, in whole or in part, through mastery-based education on equal footing as a traditional high school transcript and diploma.
CHAPTER 99

(Com. Sub. for H. B. 2422 - By Delegate Summers)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to providing for the county board to select the week for the observation of “Celebrate Freedom Week” and adding the Emancipation Proclamation as a document to be studied.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9. Required courses of instruction.

(a) In all public, private, parochial and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The state board shall, with the advice of the state superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational
schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to §3-22 of this code.

(b) The state board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through 12 as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity to maintaining healthy weight; and (4) education concerning cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.
(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least 30 minutes of instruction for each student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term “psychomotor skills” means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as “psychomotor skills”. The CPR instruction must be based on an instructional program established by the American Heart Association or the American Red Cross or another program which is nationally recognized and uses the most current national evidence-based Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by community members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses and representatives of the American Heart Association or the American Red Cross. These community members are encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an automated external defibrillator (AED): Provided, That any instruction that results in a certification being earned must be taught by an authorized CPR/AED instructor.

(e) A full week of classes during the week selected by the county board of education shall be recognized as “Celebrate Freedom Week”. The purpose of Celebrate Freedom Week is to educate students about the sacrifices
Celebrate Freedom Week must include appropriate instruction in each social studies class which:

(1) Includes an in-depth study of the intent, meaning and importance of the Declaration of Independence, the Emancipation Proclamation and the Constitution of the United States with an emphasis on the Bill of Rights;

(2) Uses the historical, political and social environments surrounding each document at the time of its initial passage or ratification; and

(3) Includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the Constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our Constitutional republic.

The requirements of this subsection are applicable to all public, private, parochial and denominational schools located within this state. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

(f) Beginning the 2018-2019 school year, students in the public schools shall be administered a test the same as or substantially similar to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services between their ninth and twelfth grade years as an indicator of student achievement in the area of civics education. The test results may be reported in the aggregate to the county board for evaluation by the board’s curriculum director and reported to the board members. Nothing in this subsection creates a standard or requirement subject to state accountability measures.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9F-10, relating to requiring certain safety measures be taken at public schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-10. School safety requirements.

In addition to any other requirement contained in this article or the Crisis Response Plan required by §18-9F-9 of this code, each county board of education shall implement a school safety program before September 1, 2019, that at a minimum, requires:

(1) Room numbers to be placed on exterior walls or windows of school buildings, so rooms with exterior walls can be identified by law enforcement and first responders from the outside;

(2) Providing updated floor plans of the school to first responders and local law enforcement by September 1 of each school year;

(3) First aid training for all school personnel and students each school year; and

(4) Active shooter training for all school personnel and students at the beginning of each school year.
AN ACT to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating generally to automatic voting registration through the Division of Motor Vehicles; adding United States citizenship status to information that applicants must provide; requiring the Division of Motor Vehicles to develop a regular process by January 1, 2020, that allows the Secretary of State to fulfill his or her duties as provided by §3-2-3 of this code to confirm that persons who are noncitizens of the United States have not and cannot register to vote via the Online Voter Registration portal; delaying the effective date for automatic voter registration in conjunction with certain Division of Motor Vehicle transactions until July 1, 2021; and requiring the Division of Motor Vehicles, the Department of Transportation, and the Secretary of State to file certain reports with, and appear before, the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary during the first interim meetings occurring after September 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services shall obtain as an integral
and simultaneous part of every process of application for the issuance, renewal, or change of address of a motor vehicle driver’s license, or official identification card pursuant to the provisions of §17B-2-1 et seq. of this code, when the division’s regional offices are open for regular business, the following information from each qualified registrant:

(1) Full name, including first, middle, last, and any premarital names;

(2) Date of birth;

(3) Residence address and mailing address, if different;

(4) The applicant’s electronic signature;

(5) Telephone number, if available;

(6) Email address, if available;

(7) Political party membership, if any;

(8) Driver’s license number and last four digits of Social Security number;

(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements;

(10) United States citizenship status;

(11) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;

(12) Date of application; and

(13) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles,
the Division of Motor Vehicles shall release all of the
information obtained pursuant to subsection (a) of this
section to the Secretary of State, who shall forward the
information to the county clerk for the relevant county to
process the newly registered voter or updated information
for the already-registered voter pursuant to law. The
Division of Motor Vehicles shall notify the applicant that by
submitting his or her signature, the applicant grants written
consent for the submission of the information obtained and
required to be submitted to the Secretary of State pursuant
to this section.

(c) By no later than January 1, 2020, the Division of
Motor Vehicles shall create a regular process that allows the
Secretary of State to fulfill his or her duties as provided by
§3-2-3 of this code to confirm that persons who are
noncitizens of the United States have not and cannot register
to vote via the Online Voter Registration portal.

(d) Information regarding a person’s failure to sign the
voter registration application is confidential and may not be
used for any purpose other than to determine voter
registration.

(e) A qualified voter who submits the required
information or update to his or her voter registration,
pursuant to the provisions of subsection (a) of this section,
in person at a driver licensing facility at the time of applying
for, obtaining, renewing, or transferring his or her driver’s
license or official identification card and who presents
identification and proof of age at that time is not required to
make his or her first vote in person or to again present
identification in order to make that registration valid.

(f) A qualified voter, who submits by mail or by delivery
by a third party an application for registration on the form
used in conjunction with driver licensing, is required to
make his or her first vote in person and present identification
as required for other mail registration in accordance with the
provisions of §3-2-10(g) of this code. If the applicant has
been previously registered in the jurisdiction and the
application is for a change of address, change of name,
change of political party affiliation, or other correction, the
presentation of identification and first vote in person is not
required.

(g) An application for voter registration submitted
pursuant to the provisions of this section updates a previous
voter registration by the applicant and authorizes the
cancellation of registration in any other county or state in
which the applicant was previously registered.

(h) A change of address from one residence to another
within the same county which is submitted for driver
licensing or nonoperator’s identification purposes in
accordance with applicable law serves as a notice of change
of address for voter registration purposes if requested by the
applicant after notice and written consent of the applicant.

(i) Completed applications for voter registration or
change of address for voting purposes received by an office
providing driver licensing services shall be forwarded to the
Secretary of State within five days of receipt unless other
means are available for a more expedited transmission. The
Secretary of State shall remove and file any forms which
have not been signed by the applicant and shall forward
completed, signed applications to the clerk of the
appropriate county commission within five days of receipt.

(j) Voter registration application forms containing voter
information which are returned to a driver licensing office
unsigned shall be collected by the Division of Motor
Vehicles, submitted to the Secretary of State, and
maintained by the Secretary of State’s office according to
the retention policy adopted by the Secretary of State.

(k) The Secretary of State shall establish procedures to
protect the confidentiality of the information obtained from
the Division of Motor Vehicles, including any information
otherwise required to be confidential by other provisions of this code.

(l) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(m) This section does not require the Division of Motor Vehicles to determine eligibility for voter registration and voting.

(n) Except for the changes made to subsection (b) of this section during the 2017 regular legislative session, the changes made to this section during the 2016 regular legislative session become effective on July 1, 2021, and any costs associated therewith shall be paid by the Division of Motor Vehicles. The Commissioner of the Division of Motor Vehicles, the Secretary of the Department of Transportation, and the Secretary of State shall each appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary, during the first interim meetings of such committees occurring after September 1, 2019, to present written reports containing a full and complete list of any infrastructure each agency requires to achieve the purposes of this section. Along with the report required by this subsection, the Division of Motor Vehicles shall submit a written schedule to both committees outlining how the division will implement the requirements of this section by July 1, 2021.

(o) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement the requirements of this section.
AN ACT to amend and reenact §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-9, and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §3-8-5c, 3-8-5g, §3-8-9a, §3-8-9b, and §3-8-9c, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying requirements for information to be included in independent expenditure reports; providing that persons or committees required to file federal expenditure reports are not exempt from requirement to file state-level expenditure and electioneering disclosure reports; raising the threshold amounts for required disclosure of independent expenditures occurring within a certain time frame preceding elections; requiring electronic filing of certain financial disclosure statements; requiring that certain records and receipts related to expenditures for electioneering communications be maintained for five years; removing the deadline before an election for a political action committee or political party committee to file a statement of organization; clarifying that a political committee must file a statement of organization before engaging in any activity; specifying information to be included in a statement or organization; modifying record-keeping requirements for certain receipts and expenditures made for political purposes and requiring that records be maintained for a period of two years; modifying deadlines for financial disclosure reports; providing that candidates for certain offices must file financial disclosure statements electronically and candidates for other
offices may file by mail, facsimile, or electronic means; modifying limits on contributions to candidates and candidate committees; modifying limits on contributions to state party executive committees and legislative caucus campaign committees; modifying limits on contributions to political action committees; providing that precandidates may accept contributions for a general election campaign prior to nomination, but may not expend such funds until after nomination is declared; providing that persons receiving precandidacy contributions are subject to certain expenditure reporting requirements; prohibiting foreign nationals from making contributions or donations to candidates, committees, and parties, and prohibiting receipt of a contribution or donation by a foreign national; modifying daily rate of civil penalty for persons filing late, inaccurate, or incomplete financial statements and making such penalty mandatory; requiring the Secretary of State to publish an online list of persons filing late financial statements; providing that membership organizations are subject to certain limitations applying to corporate contributions and solicitation of contributions by corporations; adding certain expenses to the list of permissible expenses of political committees; providing that coordinated expenditures are treated as contributions; providing criteria for whether an expenditure is coordinated and exceptions thereto; permitting political party committees and legislative caucus campaign committees to make coordinated expenditures up to certain limits in connection with certain state-level candidates; permitting political committees to engage in joint fund-raising efforts pursuant to a written agreement filed with the Secretary of State subject to certain requirements; requiring the State Election Commission to promulgate legislative rules pertaining to joint fund-raising efforts; permitting unlimited transfers of money between and among state party executive committees, legislative caucus campaign committees, and national committees of the same political party for voter registration and get-out-the-vote initiatives; providing that prohibition against intimidating or coercing certain government employees into engaging in political activity also extends to
intimidating or coercing employees into refraining from political activity; eliminating prohibition on a political organization organized under Section 527 of the Internal Revenue Code from soliciting or accepting donations before registering with the Secretary of State; providing that it is unlawful for any person to establish more than one political committee with the intent to evade contribution limitations; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

1. **Ballot issue** means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits, or any other question that is placed before the voters for a binding decision.

2. **Billboard advertisement** means a commercially available outdoor advertisement, sign, or similar display regularly available for lease or rental to advertise a person, place, or product.

3. **Broadcast, cable, or satellite communication** means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

4. **Candidate** means an individual who:

   (A) Has filed a certificate of announcement under §3-5-7 of this code or a municipal charter;

   (B) Has filed a declaration of candidacy under §3-5-23 of this code;
(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county, municipal, or party office to be filled at any primary, general, or special election.

(5) “Candidate’s committee” means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(6) “Caucus campaign committee” means a West Virginia House of Delegates or Senate political party caucus campaign committee that receives contributions and makes expenditures to support or oppose one or more specific candidates or slates of candidates for nomination, election, or committee membership.

(7) “Clearly identified” means that the name, nickname, photograph, drawing, or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as “the Governor”, “your Senator”, or “the incumbent”, or through an unambiguous reference to his or her status as a candidate, such as “the Democratic candidate for Governor” or “the Republican candidate for Supreme Court of Appeals”.

(8) “Contribution” means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance, promise of money, or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of
influencing the nomination, election, or defeat of a candidate.

(A) A coordinated expenditure is a contribution for the purposes of this article.

(B) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: Provided, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(9) “Coordinated expenditure” is an expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate’s committee and meeting the criteria provided in §3-8-9a of this code.

(10) “Corporate political action committee” means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(11) “Direct costs of purchasing, producing, or disseminating electioneering communications” means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs, and postage; or

(B) The cost of air time on broadcast, cable, or satellite radio and television stations, the costs of disseminating printed materials, studio time, use of facilities, and the charges for a broker to purchase air time.

(12) “Disclosure date” means either of the following:
(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications.

(13) “Election” means any primary, general, or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special, or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term “nomination” as used in this article.

(14) (A) “Electioneering communication” means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or publication in any newspaper, magazine, or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals, or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election in which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election in which the office sought by the candidate is to be filled; and
(iii) Is targeted to the relevant electorate.

(B) “Electioneering communication” does not include:

(i) A news story, commentary, or editorial disseminated through the facilities of any broadcast, cable or satellite television, radio station, newspaper, magazine, or other periodical publication not owned or controlled by a political party, political committee, or candidate: Provided, That a news story disseminated through a medium owned or controlled by a political party, political committee, or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing, or listening area;

(ii) Activity by a candidate committee, party executive committee, a caucus campaign committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to §3-8-5 of this code or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: Provided, That independent expenditures by a party executive committee, caucus committee, or a political action committee required to be reported pursuant to §3-8-2 of this code are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;
(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate, or his or her status as a candidate; or

(viii) A communication, such as a voter’s guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(15) “Expressly advocating” means any communication that:

(A) Uses phrases such as “vote for the Governor”, “re-elect your Senator”, “support the incumbent nominee for Supreme Court”, “cast your ballot for the Republican challenger for House of Delegates”, “Smith for House”, “Bob Smith in ‘04”, “vote Pro-Life”, or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory”, “defeat” accompanied by a picture of one or more candidates, “reject the incumbent”;
(B) Communicates campaign slogans or individual words that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say “Smith’s the One”, “Jones ‘06”, “Baker”, etc.; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

(16) “Financial agent” means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(17) “Financial transactions” means all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election, or defeat of any candidate to be voted on.

(18) “Firewall” means a policy designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for a communication and those employees or consultants currently or previously providing services to a candidate, or to a committee supporting or opposing a candidate, clearly identified in the communication.

(19) “Foreign national” means the following:

(A) A foreign principal, as such term is defined in 22 U.S.C. §611(b), which includes:

(i) A government of a foreign country;

(ii) A foreign political party;
(iii) A person outside of the United States, unless it is established that such person:

(I) Is an individual and a citizen of the United States; or

(II) That such person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(iv) A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

(B) An individual who is not a citizen of the United States or a national of the United States, as defined in 8 U.S.C. §1101(a)(22), and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

(20) “Fund-raising event” or “fundraiser” means an event such as a dinner, reception, testimonial, cocktail party, auction, or similar affair through which contributions are solicited or received.

(21) “In concert or cooperation with or at the request or suggestion of” means that a candidate or his or her agent consulted with:

(A) The sender regarding the content, timing, place, nature, or volume of a particular communication or communication to be made; or

(B) A person making an expenditure that would otherwise offset the necessity for an expenditure of the candidate or candidate’s committee.

(22) “Independent expenditure” means an expenditure by a person:
(A) Expressly advocating the election or defeat of a clearly identified candidate, including supporting or opposing the candidates of a political party; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate’s authorized political committee, or a political party committee or its agents.

An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(23) “Local” refers to the election of candidates to a city, county, or municipal office and any issue to be voted on by only the residents of a particular political subdivision.

(24) “Mass mailing” means a mailing by United States mail, facsimile, or electronic mail of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this subdivision, “substantially similar” includes communications that contain substantially the same template or language, but vary in nonmaterial respects such as communications customized by the recipient’s name, occupation, or geographic location.

(25) “Membership organization” means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to its members and which uses a majority of its membership dues for purposes other than political purposes. “Membership organization” does not include organizations that grant membership upon receiving a contribution.

(26) “Name” means the full first name, middle name, or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee, or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.
(27) “Person” means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

(28) “Political action committee” means a committee organized by one or more persons, the primary purpose of which is to support or oppose the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined in this section;

(B) A membership organization, as that term is defined in this section; and

(C) An unaffiliated political action committee, as that term is defined in this section.

(29) “Political committee” means any candidate committee, political action committee, or political party committee.

(30) “Political party” means a political party as that term is defined by §3-1-8 of this code or any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof and including national or regional affiliates of the party.

(31) “Political party committee” means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination, or defeat of a candidate in any election.

(32) “Political purposes” means supporting or opposing the nomination, election, or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party, and determining the
advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

(33) “Targeted to the relevant electorate” means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more individuals in the district in the case of a candidacy for the House of Delegates.

(34) “Telephone bank” means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions, or trained volunteers.

(35) “Unaffiliated political action committee” means a political action committee that is not affiliated with a corporation or a membership organization.

§3-8-2. Requirements for reporting independent expenditures.

(a) In addition to any other reporting required by the provisions of this chapter, any person who makes independent expenditures in an aggregate amount or value in excess of $1,000 during a calendar year shall file a disclosure statement, according to the requirements of §3-8-5 of this code, that contains all of the following information:

(1) The name of the person making the expenditure;

(2) The name of any person sharing or exercising direction or control over the activities of the person making the expenditure;

(3) The name of the custodian of the books and accounts of the person making the expenditure;
(4) If the person making the expenditure is an entity, the principal place of business of the partnership, corporation, committee, association, organization, or group which made the expenditure;

(5) The amount of each independent expenditure during the period covered by the statement and the name of the person to whom the expenditure was made;

(6) The elections to which the independent expenditure pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the expenditure is intended to support or oppose the identified candidates, and the amount of the total expenditure reported pursuant to subdivision (5) of this subsection spent to support or oppose each of the identified candidates;

(7) The name and address of any person who contributed a total of more than $250 between the first day of the preceding calendar year, and the disclosure date, and whose contributions were made for the purpose of furthering the expenditure;

(8) With regard to the contributors required to be listed pursuant to subdivision (7) of this subsection the statement shall also include:

(A) The month, day, and year that the contributions of any single contributor exceeded $250;

(B) If the contributor is a political action committee, the name and address the political action committee registered with the Secretary of State, county clerk, or municipal clerk;

(C) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual’s current employer, if any, or, if the individual is self-employed, the name and address of the individual’s business, if any;
(D) A description of the contribution, if other than money; and

(E) The value in dollars and cents of the contribution; and

(9) A certification that such independent expenditure was not made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

(b) Any person who makes a contribution for the purpose of funding an independent expenditure under this subsection shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(c) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, on behalf of, for, or against each candidate, as reported under this subsection, and shall periodically publish such indices on a timely pre-election basis.

(d)(1) Any person or political committee that makes or contracts to make independent expenditures aggregating $5,000 or more for any statewide, legislative, or multicounty judicial candidate or $500 or more for any county office candidate, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the 15th day, but more than 12 hours, before the date of an election shall file a report on a form prescribed by the Secretary of State describing the expenditures within 24 hours: Provided, That a person making expenditures for any statewide or legislative candidate on or after the 15th day but more than 12 hours before the day of any election meeting the criteria of this
section, but which are subject to the disclosure requirements of §3-8-2b of this code, shall report such expenditures in accordance with the requirements of §3-8-2b of this code and may not file the report otherwise required by this subsection.

(2) Any person who files a report under subdivision (1) of this subsection shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $5,000 or more for any statewide, legislative, or multicounty judicial candidate or $500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates.

(e) (1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating $10,000 or more at any time, up to and including the 15th day before the date of an election, shall file a report on a form prescribed by the Secretary of State describing the expenditures within 48 hours.

(2) Any person who files a report under subdivision (1) of this subsection shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(f) Any communication paid for by an independent expenditure must include a clear and conspicuous public notice that:

(1) Clearly states that the communication is not authorized by the candidate or the candidate’s committee; and
(2) Clearly identifies the person making the expenditure: Provided, That if the communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(g) Any person who has spent a total of $5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of five years following the filing of a disclosure pursuant to §3-8-2b of this code and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in §3-8-7 of this code.

(h) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, or confined in jail for not more than one year, or both fined and confined.

(i)(1) Any person or political committee who is required to file a statement under this section shall file the statement electronically in accordance with such rules as the Secretary of State may promulgate.

(2) The Secretary of State shall make any document filed electronically, pursuant to this subsection, accessible to the public on the Internet not later than 24 hours after the document is received by the secretary.

(3) In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified under any of the methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.
(j) This section does not apply to candidates for federal office.

(k) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter 29A of this code, to establish guidelines for the administration of this section.

§3-8-4. Treasurers and financial agents; written designation requirements.

(a) No person may act as the treasurer of any political action committee or political party committee supporting, aiding, or opposing the nomination, election, or defeat of any candidate for an office encompassing an election district larger than a county unless a written statement of organization, on a form to be prescribed by the Secretary of State, is filed with the Secretary of State. A change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as the treasurer for any candidate committee for a candidate for any office encompassing an election district larger than a county, any legislative office, or any circuit judgeship unless a written statement of organization designating that person as the treasurer or financial agent is filed with the Secretary of State. A change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(c) No person may act as treasurer of any political committee advocating for candidates to be nominated or elected by the voters of a county or a district therein, except legislative and circuit judge candidates, unless a written statement of organization designating him or her as the treasurer is filed with the clerk of the county commission or the Secretary of State. A change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.
(d) Prior to engaging in any activity, a political committee shall file a statement of organization required by subsection (a) of this section. A statement of organization form required by this section shall be certified as accurate and true and signed by the treasurer and the chairman of the committee, and shall include the following information:

(1) The name of the political committee;

(2) The name of the treasurer;

(3) The mailing address, telephone number, and e-mail address of the committee;

(4) The mailing address, telephone number, and e-mail address of the treasurer, if different from the committee information;

(5) The name of the chairman of the committee;

(6) The affiliate organization, if any;

(7) The type of political committee, as determined by the description of types of committees included in the definitions of “political committee” and “political action committee” in §3-8-1a of this code; and

(8) Whether the committee will participate in statewide or local elections.

(e) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a filing designating a treasurer for a state, county, or municipal political committee may be made any time before the committee either accepts or spends funds. Once a designation is made by a state, county, or municipal political committee, no additional designations are required under this section until a successor treasurer is designated.

(f) A state, county, or municipal political committee may terminate a designation made pursuant to this section.
by making a written request to terminate the designation on
a form prescribed by the Secretary of State and by filing a
report of financial information required in §3-8-5 of this
code indicating that the political committee has no funds or
debts remaining in the committee’s account. This written
request shall be filed with either the Secretary of State or the
clerk of the county commission as provided by subsections
(a), (b), and (c) of this section.

§3-8-5. Detailed accounts and verified financial statements
required.

(a) Record-keeping requirements. —

(1) Except for candidates for party committeeman and
committeewoman, all candidates for nomination or election
to state or local offices and all persons supporting, aiding,
or opposing the nomination, election, or defeat of any such
candidate shall keep, for a period of two years, records of
receipts and expenditures which are made for political
purposes.

(2) Every candidate or treasurer of every political
committee shall keep detailed accounts of every sum of
money or other thing of value received by him or her,
including all loans of money or things of value and of all
expenditures and disbursements made, or liabilities
incurred, by the candidate or political committee.

(3) A person that is not a political committee and makes
independent expenditures or electioneering communications
must keep detailed accounts of every sum of money or other
thing of value received by him or her for the purpose of
furthering any independent expenditure or electioneering
communication and of all disbursements made for
independent expenditures or electioneering communications.

(b) Financial reporting requirements. —
(1) Every person required to keep detailed accounts under subsection (a) of this section shall file a detailed, itemized sworn statement, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:

(A) On April 1 of each year, the person shall file a statement of all financial transactions dating from January 1 to March 31 of the same year, to be filed within six days thereafter;

(B) On July 1 of each year, the person shall file a statement of all financial transactions dating from April 1 to June 30 of the same year, to be filed within six days thereafter;

(C) On October 1 of each year, the person shall file a statement of all financial transactions dating from July 1 to September 30 of the same year, to be filed within six days thereafter; and

(D) On January 1 of each year, the person shall file a statement of all financial transactions dating from October 1 to December 31 of the previous year, to be filed within six days thereafter.

(2) In addition to the statements required in subdivision (1) of this subsection, a candidate or candidate’s committee shall file detailed itemized sworn statements, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:

(A) On the 15th day preceding the primary election in which a candidate is on the ballot, the candidate or committee shall file a statement of all financial transactions subsequent to the previous statement, if any, to be filed within four business days after the 15th day; and

(B) On the 15th day preceding the general election in which a candidate, including an official write-in candidate, is on the ballot, the candidate or committee shall file a statement of all financial transactions subsequent to the
previous statement, if any, to be filed within four business
days after the 15th day.

(c) A person required to file reports pursuant to 52 U.S.C.
§30104 is exempt from the requirements of subsection (b) of
this section but is not exempt from the state-level
electioneering communication reports requirements in §3-8-2b
of this code or the independent expenditure reporting
requirements in §3-8-2 of this code.

(d) Every person who is qualified as an official write-in
candidate for any elective office shall individually, or by
candidate committee, comply with all of the applicable
requirements of this section.

(e) Candidates for the office of conservation district
supervisor elected pursuant to the provisions of §19-21A-1
et seq. of this code are required to file only the report
required by paragraph (A), subdivision (2), subsection (b)
of this section immediately prior to the applicable general
election that is held concurrently with the state’s primary
election.

§3-8-5b. Where financial statements and reports shall be filed;
filing date prescribed.

(a) The financial statements provided for in this article
shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices, circuit
judge, and family court judge, and for statewide and other
offices to be nominated or elected by the voters of a political
division greater than a county;

(2) The clerk of the county commission by candidates
for offices to be nominated or elected by the voters of a
single county or a political division within a single county,
except circuit judge and family court judge; or

(3) The proper municipal officer by candidates for
office to be nominated or elected to municipal office.
(b)(1) The following statements or reports shall be filed electronically, in a manner prescribed by the Secretary of State:

(A) Financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, State Senate, House of Delegates, Supreme Court of Appeals, circuit judge, or family court judge;

(B) Financial statements filed by political committees;

(C) Electioneering communication reports; and

(D) Independent expenditure reports.

(2) If through or by no fault of the candidate the candidate is unable to file the campaign financial statement, the candidate shall then file said statement in person, via facsimile or other electronic means of transmission, or by certified mail postmarked at the first reasonable opportunity.

(3) Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(c) Candidates for all offices not identified in subsection (b) of this section may file financial statements by mail, in person, by facsimile, or by other electronic means of transmission. For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State, or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of that office.
(d) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the Internet by the Secretary of State within 10 business days from the date the financial statement is filed.

§3-8-5c. Contribution limitations.

(a)(1) A person, political party, or political action committee may not, in an election cycle:

(A) Contribute more than $2,800, directly or indirectly, to a candidate’s committee for a candidate seeking nomination, including by making contributions to the candidate’s committee; or

(B) Contribute more than $2,800, directly or indirectly, to a candidate’s committee for a candidate seeking election, including by making contributions to the candidate’s committee: Provided, That a candidate may receive contributions for the general election prior to nomination, however, such funds may not be expended until after the date of the nomination is declared.

(2) The contribution limits of this section apply only to elections to be held after the effective date of this section and do not apply to candidate committees that were created for elections held prior to the effective date of this section.

(b) A person may not, directly or indirectly, make contributions to a state party executive committee, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee which, in the aggregate, exceed $10,000 in any calendar year: Provided, That a person may not earmark or otherwise designate any portion of a contribution made pursuant to this subsection to be used to support or oppose the election of a particular candidate: Provided, however, That any such designation or earmark that accompanies a contribution made pursuant to this subsection may not be binding on the entity that receives the contribution.
§3-8-5e. Pre-candidacy financing and expenditures.

(a) Notwithstanding any other provisions of this code, it is lawful for a person, otherwise qualified to be a candidate for any public office or position to be determined by public election, to receive contributions or make expenditures, or both personally or by another individual acting as a treasurer, to determine the advisability of becoming such a candidate or preparing to be such a candidate: Provided, That such contributions may be received and such expenditures made only during the four years immediately preceding the term for which such person may be a candidate or during the term of office immediately preceding the term for which such person may be a candidate, whichever is less: Provided, however, That no person is disqualified from receiving contributions or making expenditures as permitted under the provisions of this section solely because such person then holds a public office or position.

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, shall designate himself or another individual to act as a treasurer and shall file a designation of treasurer in the manner provided in §3-8-4 of this code before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of treasurer shall be reported in accordance with the provisions of §3-8-5 of this code regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or herself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of
value received by him or her, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by §3-8-5 of this code.

(d) Regardless of whether such person becomes a candidate as originally intended, becomes a candidate for some office other than the office or position originally intended, or does not become a candidate, all limits on campaign contributions and campaign expenditures applicable to the candidacy of or advocacy of the candidacy of such person for the office he or she actually seeks shall be applicable to and inclusive of the receipts had and expenditures made during such pre-candidacy period as well as after the person becomes a candidate.

§3-8-5g. Prohibition on political contributions and expenditures by foreign nationals.

(a) A foreign national may not, directly or indirectly, make:

(1) A contribution or donation, or an express or implied promise to make a contribution or donation, to a candidate’s committee, a political committee, or a political party; or

(2) An independent expenditure or any disbursement for an electioneering communication related to a state or local election.

(b) A person may not solicit, accept, or receive a contribution or donation described in subsection (a) of this section.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any person, candidate, financial agent, or treasurer of a political committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not less than $500 or confined in jail for not more than one year, or both fined and confined. Sixty days after any primary or other election, the Secretary of State, county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent, or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent, or treasurer resides, is located, or has its principal place of business.

(b) (1) Any person, candidate, financial agent, or treasurer of a political committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement shall be assessed a civil penalty by the Secretary of State of $10 a day for each day after the due date the statement is delinquent, grossly incomplete, or grossly inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete, or grossly inaccurate statement by any person, candidate, financial agent, or treasurer of a political committee and forward copies of such delinquent, incomplete, or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to this section shall be payable to the State of West Virginia and is collectable as authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete, or inaccurate statement.
(4) The Secretary of State shall publish online a list of all persons required to file statements with the Secretary of State who file statements after the deadline in an election cycle. This list shall be maintained and be publicly available online to include late activity for, at a minimum, the previous five years up to the current year.

(5) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with §29A-3-1 et seq. of this code, to establish procedures for the assessment of civil penalties as provided in this section.

c (1) Any candidate, whether nominated by primary election or appointed by executive committee or executive committee chair, who has failed to file any sworn statement as required by this article relating to the immediately preceding primary election for any office by the 84th day before the general election, is disqualified and may not have his or her name appear on the general election ballot. The provisions of §3-8-5b(d) of this code notwithstanding, any sworn statement filed after the deadline required by §3-8-5 of this code must be received in the office indicated by §3-8-5b(a) of this code by the close of business on the 84th day before the general election.

(2) It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file any sworn statement required by this article and no person may enter upon the duties of his or her office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of the statement.

(3) The vacancy on the ballot created by the disqualification in this subsection is subject to §3-5-19 of this code.
(d) As used in this section, “grossly” means substantive and material, and specifically includes false or misleading representations and acts of omissions.

(e) The Secretary of State shall provide by rule protocols for written notice via certified mail, return receipt requested, to the person, candidate, financial agent, or treasurer of a political party committee that is not in compliance with the requirements of this section. With respect to a violation of subsection (c) of this section, the notice shall be provided 60 days after any primary or other election.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) An officer, agent, or person acting on behalf of any membership organization or any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may not pay, give, lend, or authorize to be paid, any money or other thing of value belonging to the corporation to any candidate or candidate’s campaign committee for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(b) A person may not solicit or receive any payment, contribution, or other thing from any membership organization or any corporation or from any officer, agent, or other person acting on behalf of the membership organization or corporation to any candidate or candidate’s campaign committee for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(c)(1) The provisions of this section do not prohibit a membership organization or corporation from soliciting, through any officer, agent, or person acting on behalf of the membership organization or corporation, contributions to a separate segregated fund to be used for political purposes.
Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees.

(2) It is unlawful for:

(A) A membership organization, corporation, or separate segregated fund to make a primary or other election contribution or expenditure by using money or anything of value secured: (i) By physical force, job discrimination, or financial reprisal; (ii) by the threat of force, job discrimination, or financial reprisal; or (iii) as a condition of employment;

(B) Any person soliciting a membership organization member, stockholder, executive, or administrative personnel member or their family members for a contribution to a membership organization, corporation, or separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a contribution to a membership organization, corporation, or separate segregated fund to fail to inform the person solicited at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) A separate segregated fund established by a membership organization or a corporation: (i) To solicit contributions to the fund from any person other than the membership organization’s members or the corporation’s stockholders and their families, or its executive or administrative personnel and their families; or (ii) to contribute any membership organization or corporate funds;

(E) A separate segregated fund established by a membership organization or corporation to receive contributions to the fund from any person other than the
57 membership organization’s members or corporation’s
58 stockholders and their immediate families and their executive or administrative personnel and their immediate families;

61 (F) A membership organization or corporation to engage in job discrimination or to discriminate in job promotion or transfer because of a member’s or an employee’s failure to make a contribution to the membership organization or corporation or a separate segregated fund;

67 (G) A separate segregated fund to make any contribution, directly or indirectly, in excess of the amounts permitted in §3-8-5c of this code in connection with or on behalf of any campaign for nomination or election to any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting, or aiding the nomination or election of any candidate for any such office; or

76 (H) A membership organization or corporation to pay, give, or lend or to authorize payment, giving, or lending of any moneys or other things of value belonging to the membership organization or corporation to a separate segregated fund for the purpose of making a contribution to a candidate or a candidate’s committee. This provision does not prohibit a separate segregated fund from using the property, real or personal, facilities, and equipment of a membership organization or corporation solely to establish, administer, and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (e) of this section: Provided, That any such membership organization or corporation shall also permit any group of its employees represented by a bona fide political action committee to use the real property of the membership organization or corporation solely to establish, administer, and solicit contributions to the fund of the political action committee, subject to the rules of the State
Election Commission promulgated in accordance with said subsection.

(3) For the purposes of this section, the term “executive or administrative personnel” means individuals employed by a membership organization or corporation who are paid on a salary rather than hourly basis and who have policy-making, managerial, professional, or supervisory responsibilities.

(d) Any person, membership organization, or corporation violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000. A membership organization or corporation may not reimburse any person the amount of any fine imposed pursuant to this section.

(e) To ensure uniform administration and application of the provisions of this section and of those of the Federal Election Campaign Act Amendments of 1976 relating to membership organization and corporate contributions, the State Election Commission shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement the provisions of this section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 52 U.S.C. §30118.

(f) In addition to the powers and duties set forth in §3-1A-1 et seq. of this code, the State Election Commission has the following powers and duties:

(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers,
records, and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall, upon determining that a reason to believe that a violation has occurred, present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(g) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(h) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State Election Commission and shall remain undisclosed except upon an indictment by a grand jury.

(i) Any person who discloses the fact of any complaint, investigation, or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000, nor more than $5,000, and shall be confined in jail not less than six months nor more than one year.

(j) The amendments to this section enacted during the second extraordinary session of the Legislature, 2008, are intended to conform to the existing proscription to constitutionally permissible limits and not to create a new offense or offenses.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.
(a) No financial agent or treasurer of a political committee shall pay, give, or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment, and other furnishing of offices to be used as political headquarters and for the payment of necessary employees;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment, and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate’s business and for the payment of necessary employees;

(3) For printing and distributing books, pamphlets, circulars, and other printed matter, radio and television broadcasting, and painting, printing, and posting signs, banners, and other advertisements, including contributions to charitable, educational, or cultural events, for the promotion of the candidate or the candidate’s name, or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents, and committees and for stationery, postage, telegrams, telephone, express, freight, and public messenger service;

(6) For preparing, circulating, and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons
listed therein, and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments, and any information relating to any political issue, candidate, or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase “conducting of public opinion poll or polls” shall mean and be limited to the gathering, collection, collation, and evaluation of information reflecting public opinion, needs, and preferences as to any candidate, group of candidates, party, issue, or issues. No such poll may be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition, or other matter to be voted on by the public at any election: Provided, That nothing herein may prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9), and (10) of this subsection;

(12) For the purchase of memorials, flowers, or citations by political party executive committees or political action committees representing a political party;
(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within 30 days thereafter;

(14) For the payment of dues or subscriptions to any national, state, or local committee of any political party;

(15) For contributions to a county party executive committee, state party executive committee, or a caucus campaign committee;

(16) For transfers to any national, state, or local committee of any political party when that committee is acting in the role of a vendor: Provided, That no such transfer may involve any coordination between the candidate and the political party committee without being considered as a contribution;

(17) For payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;

(18) For payment for food and drink for campaign-related purposes;

(19) For the payment of any required filing fees associated with the campaign, except that a candidate may not pay any fines assessed against the candidate or the candidate’s committee pursuant to this article; and

(20) For contributions to a candidate committee: Provided, That a candidate committee may not contribute to another candidate committee except as otherwise provided by §3-8-10 of this code.

(b) A political action committee may not contribute to another political action committee or receive contributions from another political action committee: Provided, That a political action committee may receive contributions from its national affiliate, if any.
(c) Every liability incurred and payment made shall be for the fair market value of the services rendered.

d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by §3-8-5a of this code, the financial statements required by §3-8-5 of this code at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent, or treasurer of a political party committee.

e) Any candidate may designate a financial agent by a writing duly subscribed by the candidate which shall be in such form and filed in accordance with §3-8-4 of this code.

§3-8-9a. Coordinated expenditures.

(a) Except as provided in §3-8-9b of this code, a coordinated expenditure is considered to be a contribution and is subject to all requirements for contributions contained in this article.

(b) An expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate’s committee is a coordinated expenditure if the communication resulting from the expenditure is paid for, in whole or in part, by a person other than the candidate, candidate committee, or party committee, and one of the following circumstances exists:

(1) The communication is created, produced, distributed, or undertaken at the request or suggestion of a candidate, candidate committee, or party committee.

(2) The candidate, candidate committee, or party committee is involved in the creation, production, or distribution of the communication, or has had discussions about the communication with any person or the agents of a person who has paid for or played a role in the creation, production, or distribution of the communication: Provided, That this paragraph does not apply if the information or
Materials used in the creation, production, distribution, or undertaking of the communication was obtained from a publicly available source.

(3) Any person involved in the creation, production, or distribution of the communication has, in the four months preceding the date on which the expenditure is made, been an employee or vendor of campaign services for the candidate, candidate committee, or party committee.

(c) An expenditure is not a coordinated expenditure, based solely on any of the following circumstances:

1. A candidate committee or a political party committee responds to an inquiry about the candidate’s or political party committee’s positions on legislative or policy issues, including substantive discussion of the legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs;

2. A candidate endorses another candidate;

3. A candidate solicits funds for another candidate, a political committee, a party committee, or organizations eligible to receive tax-deductible donations under 26 U.S.C. §170 (or any successor provision) and regulations of the U.S. Department of Treasury; or

4. A candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, if the communication does not refer to an election or another candidate who seeks the same office as that candidate.

(d)(1) An expenditure otherwise meeting the description of a coordinated expenditure contained in subdivision (3), subsection (b) of this section, is not a coordinated expenditure if the commercial vendor, former employee, or political committee at issue has established and implemented a firewall that meets the following requirements:
(A) The firewall is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to a candidate, or a committee supporting or opposing a candidate, clearly identified in the communication; and

(B) The firewall is described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy.

(2) A communication does not qualify for the exemption contained in this subsection if, despite the firewall, information subject to the firewall concerning a candidate, candidate’s committees, or a party committee’s campaign plans, projects, activities, or needs that are material to the creation, production, or distribution of the communication is used or conveyed to the person paying for the communication.

(e) Any communication that results from a coordinated expenditure must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate, the candidate committee, or the party committee with which it was coordinated.

§3-8-9b. Coordinated expenditures by political party committees and political party caucuses in connection with certain statewide candidates.

(a) Notwithstanding the provisions of §3-8-9a of this code, the state committee of a political party and caucus campaign committee may make coordinated expenditures in an amount not to exceed $5,000 in connection with the general election campaign of the candidate for each of the following offices: Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate, and House of Delegates.
(b) Any communication that results from a political expenditure and is made in coordination with a state committee of a political party and caucus campaign committee must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate or candidate’s committee with whom it was coordinated.

§3-8-9c. Joint fundraising.

(a) Political committees may engage in joint fund-raising efforts with other political committees or with committees registered with the Federal Election Commission pursuant to a written joint fund-raising agreement.

(b) A written joint fund-raising agreement must be filed with the Secretary of State and must provide terms for the allocation of fund-raising proceeds between or among political committees engaging in the joint fund-raising effort. The Secretary of State shall post all joint fund-raising agreements on the Internet within 10 business days from the date the agreement is filed.

(c) Any person soliciting funds for a joint fund-raising effort shall disclose, in making or publishing solicitations, the name of all political committees involved in the joint fund-raising effort and how any proceeds, including any contributions, will be allocated between or among such committees.

(d) A person, not otherwise prohibited by this article from making contributions, may make a contribution to a joint fund-raising effort subject to the contribution limits in §3-8-5c of this code.

(e) The State Election Commission shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to provide requirements for written joint fund-raising agreements and to implement the provisions of this section consistently, insofar as practicable, with the rules
and regulations promulgated by the Federal Election Commission in 11 C.F.R. §102.17.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

(a) A person may not publish, issue, or circulate, or cause to be published, issued, or circulated, any anonymous letter, circular, placard, radio or television advertisement, or other publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) An owner, publisher, editor, or employee of a newspaper or other periodical may not insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision of the state. An officer, agent, clerk, or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office, or room, occupied for any official purpose, may not knowingly permit any person to enter any building, office, or room, occupied for any official purpose, for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice
of, any political assessments to, any officer or employee of
the state, or a political subdivision of the state.

(d) Except as provided in §3-8-8 of this code, a person
entering into any contract with the state or its subdivisions,
or any department or agency of the state, either for rendition
of personal services or furnishing any material, supplies, or
equipment or selling any land or building to the state, or its
subdivisions, or any department or agency of the state, if
payment for the performance of the contract or payment for
the material, supplies, equipment, land, or building is to be
made, in whole or in part, from public funds may not, during
the period of negotiation for or performance under the
contract or furnishing of materials, supplies, equipment, land,
or buildings, directly or indirectly, make any
contribution to any political party, committee, or candidate
for public office, or to any person for political purposes or
use nor may any person or firm solicit any contributions for
any purpose during any period.

(e) A person may not, directly or indirectly, promise any
employment, position, work, compensation, or other benefit
provided for, or made possible, in whole or in part, by act of
the Legislature, to any person as consideration, favor or
reward for any political activity for the support of or
opposition to any candidate, or any political party in any
election.

(f) A person may not, directly or indirectly, make any
contribution in excess of the amounts permitted by §3-8-5c
of this code, in connection with any campaign for
nomination or election to or on behalf of any statewide
office, in connection with any other campaign for
nomination or election to or on behalf of any other elective
office in the state or any of its subdivisions, or in connection
with or on behalf of any person engaged in furthering,
advancing, supporting, or aiding the nomination or election
of any candidate for any of the offices.
(g) It is unlawful for any person to create, establish, or organize more than one political committee with the intent to avoid or evade the contribution limitations contained in this article.

(h) A person may not, directly or indirectly, make contributions to a state party executive committee or caucus campaign committee which, in the aggregate, are in excess of the amounts permitted by §3-8-5c of this code in any calendar year.

(i) The limitations on contributions contained in this section do not apply to transfers among a state party executive committee, a caucus campaign committee, and a national committee of the same political party: Provided, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(j) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: Provided, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. A person may not coerce or intimidate any nonelective salaried employee into making a contribution. A person may not coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in or refraining from any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation, or solicitation.

(k) A person may not solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration, or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected.
Nothing in this subsection may be construed to apply to
solicitations of contributions made by any person serving as
an unpaid volunteer.

(l) A person may not place any letter, circular, flyer,
advertisement, election paraphernalia, solicitation material
or other printed or published item tending to influence
voting at any election in a roadside receptacle unless it is:
(1) Approved for placement into a roadside receptacle by
the business or entity owning the receptacle; and (2)
contains a written acknowledgment of the approval. This
subdivision does not apply to any printed material contained
in a newspaper or periodical published or distributed by the
owner of the receptacle. The term “roadside receptacle”
means any container placed by a newspaper or periodical
business or entity to facilitate home or personal delivery of
a designated newspaper or periodical to its customers.

(m) Any person violating any provision of this section
is guilty of a misdemeanor and, upon conviction thereof,
shall be fined not more than $1,000, or confined in jail for
not more than one year, or both fined and confined.

CHAPTER 103

(Com. Sub. for H. B. 2362 - By Delegates Miller,
Shott, Campbell, Lovejoy, Canestraro, Maynard,
Hornbuckle, Summers and Robinson)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §3-3-1 and §3-3-5c of the Code of
West Virginia, 1931, as amended, all relating to emergency
absentee ballots; providing that persons who become confined
to a particular location on or after the seventh day preceding
an election, because of illness, injury, physical disability, immobility due to extreme advanced age, or other medical reason, may vote an emergency absentee ballot; providing that a county commission may adopt a policy extending emergency absentee voting procedures to qualified voters who are eligible to vote an emergency absentee ballot; and providing that a county clerk may require written confirmation by certain licensed medical professionals that a voter meets the criteria to vote an emergency absentee ballot based on confinement.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: The Act shall be known as the “Ardala Miller Memorial Act.”

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.

(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Illness, injury, or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: Provided, That the underlying conviction is not for a crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery in an election;
(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university, or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less;

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter’s assigned polling place are inaccessible because of his or her physical disability; and
Any voter who is participating in the Address Confidentiality Program as established by §48-28A-103 of this code.

(c) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than 30 days;

(3) Any voter who becomes confined, on or after the seventh day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason: Provided, That the county clerk may require a written confirmation by a licensed physician, physician’s assistant, or advanced practice registered nurse that the voter meets the criteria of this subdivision before permitting such voter to vote an emergency absentee ballot; and

(4) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an emergency absentee ballot, as
provided in §3-3-1(c) of this code, may vote an emergency absentee ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to: (1) Qualified voters in hospitals or other duly licensed health care facilities within an adjacent county or within 35 miles of the county seat; (2) qualified voters in nursing homes within the county; or (3) qualified voters who become confined, on or after the seventh day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason: Provided, That the policy is to be adopted by the county commission at least 90 days prior to the election that will be affected and a copy of the policy is to be filed with the Secretary of State.

(b) On or before the 56th day preceding the date on which any election is to be held, the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions pursuant to this section.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons with different political party affiliations appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of §3-1-1 et seq. of this code. Emergency absentee ballot commissioners have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Emergency absentee ballot commissioners are to be compensated for services and expenses in the same manner as commissioners of election or poll clerks obtaining and delivering election supplies under the provisions of §3-1-44 of this code.

(d) Upon request of the voter or a member of the voter’s immediate family or, when the county commission has
adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the official designated to supervise and conduct absentee voting, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application is to be prescribed by the Secretary of State and is to include the name, residence address and political party affiliation of the voter, the date, location and reason for confinement in the case of an emergency, and the name of the attending physician.

(e) The application for an emergency absentee ballot is to be signed by the person applying. If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy or physical disability, he or she is to make his or her mark on the signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(f) A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confinement of the person applying for an emergency absentee ballot, and the particulars of the confinement.

(g) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and ballot and return the application and the ballot to the official designated to supervise and conduct absentee voting. Upon delivering the
application and the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot are to be returned to the official designated to supervise and conduct absentee voting prior to the close of the polls on election day. Any ballots received by the official after the time that delivery may reasonably be made but before the closing of the polls are to be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of this code.

(h) Upon receiving the application and emergency absentee ballot, the official designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be challenged for the appropriate reason provided for in §3-3-10 of this code.

(i) If either or both of the emergency absentee ballot commissioners refuse to sign any application for voting an emergency absentee ballot, the voter may vote as an emergency absentee and the ballot will be challenged in accordance with the provisions of §3-3-10 of this code, in addition to those absentee ballots subject to challenge as provided in that section.

(j) Any voter who receives assistance in voting an emergency absentee ballot shall comply with the provisions of §3-3-6 of this code. Any other provisions of this chapter relating to absentee ballots not altered by the provisions of this section are to govern the treatment of emergency absentee ballots.
CHAPTER 104
(H. B. 2547 - By Delegate Shott)

[Passed March 5, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend and reenact §3-9-6 of the Code of West Virginia, 1931, as amended, relating to the election prohibition zone; amending the election prohibition zone from 300 feet to 100 feet.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. ELECTRONIC VOTING SYSTEMS.

§3-9-6. Unauthorized presence in election room; 100-foot limit; penalties.

If any person, not herein authorized so to do, enters or attempts to enter the election room, except upon a lawful errand and for a proper purpose, or remains within 100 feet of the outside entrance to the building housing the polling place, contrary to the provisions of this chapter, he shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than $50 nor more than $500, or confined in the county jail for not more than 30 days.

Excepting those individuals provided for expressly in this or other sections of the code, only full-time employees of the Secretary of State’s office or full-time employees of the respective county offices of the county clerk or the county prosecutor may enter or otherwise disturb the polling place.
CHAPTER 105

(Com. Sub. for H. B. 2600 - By Delegates Summers and Kessinger)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §3-4A-11a and §3-4A-15 of the Code West Virginia, 1931, as amended; to amend and reenact §3-5-10, §3-5-13, and §3-5-13a of said code; and to amend and reenact §3-6-3 of said code, all relating generally to the form of ballots; providing that sample ballots required to be printed as legal advertisements ahead of elections in counties where electronic voting has been adopted may consist of a facsimile of the absentee ballot; providing that when sample ballots for the precincts within a county contain different districts for certain offices or municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order; providing that if sample ballots must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot; providing that the publisher of the newspaper containing the sample ballot shall submit a proof and arrangement of the ballot to the ballot commissioners for approval prior to publication; providing that on primary election ballots, the nonpartisan ballot for judicial elections shall appear immediately after the state ticket and immediately before the county ticket; providing that on primary election ballots, the non-judicial nonpartisan ballot shall appear immediately after the county ticket and immediately before the district ticket; and providing that on primary election ballots, the national convention ticket shall appear immediately after the district ticket, with the election for at-large delegate to the national convention appearing
immediately after the election for congressional district delegate to the national convention.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

(2) For the general election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to §3-6-2 of this code.

(3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the circuit court;
(iii) Family court judge; and
(iv) Magistrate;
(B) Nonpartisan elections for board of education; and
(C) Any question to be voted upon.

(4) Beginning in the primary election to be held in the year 2020 and in each election thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv), paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this code.

(5) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(6) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words “WRITE-IN, IF ANY” are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are
to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

§3-4A-15. Instructions and help to voters; vote-recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election day in counties utilizing an electronic voting system that uses a screen upon which votes may be recorded by means of a stylus or by means of touch, the ballot commissioners shall provide for each polling place a sample ballot with each screen as it will appear on the devices, together with written instructions regarding the operation of the devices. Upon request, the election officers shall offer instruction to each voter, before voting, in the operation of the vote-recording device.

(b) The ballot commissioners shall also provide facsimile ballots, at least two of which, or complete sets of which, are to be posted on the walls of each polling place. The facsimile diagrams are exact diagrams of the ballots or
screens so that the voter may become familiar with the location of the parties, offices, candidates, and questions as they appear on the ballot to be used in his or her precinct.

(c) The ballot commissioners may, with the consent of the county commission, or the county commission may, prepare and mail to each qualified voter at the address shown on the registration books a facsimile sample of the ballot or screens for his or her precinct.

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by §3-5-1 et seq. and §3-6-1 et seq., which specify the publication of a facsimile sample ballot, are to consist of a facsimile of the absentee ballot, or a facsimile of each of the electronic voting system screens with the names of the candidates and the offices for which they are running shown in their proper positions: Provided, That when the sample ballots for the precincts within the county contain different senatorial, delegate, magisterial, or executive committee districts or when the sample ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided between more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official primary ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election, according to the provisions
of this article and §3-4A-1 et seq. of this code, as appropriate to the voting system. If any ballot issue is to be voted on in the primary election, the ballot commissioners shall likewise prepare a sample official ballot for that issue according to the provisions of law authorizing the election.

(b) The facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish each sample official primary election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 et seq. of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 et seq. of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than 65 percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That in counties where an electronic voting system has been adopted, the facsimile sample ballot may be a photographic reproduction of the absentee ballot: Provided, however, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee
districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and candidates for each office which will appear on the primary election ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at the primary election. All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference, shall be included in the list in the same order in which it appears on the ballot. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the official list of candidates and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the
largest circulation in compliance with the provisions of §59-3-1 et seq. of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 et seq. of this code;

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words “official list of candidates”, the name of the county, the words “primary election”, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than 14 point; (B) the title of the office shall be printed in bold type no smaller than 12 point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than 10 point; and (C) the names of the candidates shall be printed in all capital letters in bold type no smaller than 10 point and the residence information shall be printed in type no smaller than 10 point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than 14 point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.
§3-5-13. Form and contents of ballots.

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words “Primary Election” and the month, day and year of the election. The ballot title of the political party ballots is to contain the words “Official Ballot of the (Name) Party” and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officers shall commence with the words “Nonpartisan Ballot of Election of Judicial Officers” and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words “Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia”. The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.
(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Circuit Court Judge(s)”. The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Family Court Judge(s)”. The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Magistrate(s)”. The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words “Nonpartisan Ballot of Election of Members of the __________ County Board of Education”. The districts for which fewer than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the
(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: “National Ticket”, “State Ticket”, “Nonpartisan Judicial Ballot”, “County Ticket”, “Nonpartisan Ballot” in a nonpresidential election year, “District Ticket” or, in a presidential election year, “National Convention”. The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words “Vote for ________” with the number to be nominated or elected or “Vote For Not More Than ________” in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total
number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words “Vote for One” printed below the name of the office: Provided, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter’s choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in §3-5-13a of this code.
(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words “No Candidate Filed”: Provided, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words “No Candidate Filed” may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the Secretary of State” is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: Provided, That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or
notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words “Official Ballot” with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words “Poll Clerks”.

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word “sample” is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the sample.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives.
STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee.

NONPARTISAN JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, judge of the circuit court, family judge, magistrate.

COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts.

NONPARTISAN BALLOT: Nonpartisan elections for board of education, conservation district supervisor, any question to be voted upon.

DISTRICT TICKET: County executive committee.

NATIONAL CONVENTION: Delegate to the national convention — congressional district, delegate to the national convention — at-large.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at 9:00 a.m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.
(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate’s representative may attend the drawings.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or nominees with no party affiliation unless those persons have actually been nominated by an independent party, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of §3-4A-1 et seq. of this code, and for any ballot issue, according to the provisions of law authorizing the election.

(b) The facsimile sample general election ballot shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than 26 nor
less than 20 days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 et seq. of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than 26 nor less than 20 days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 et seq. of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than 65 percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That in counties where an electronic voting system has been adopted, the facsimile sample ballot may be a photographic reproduction of the absentee ballot: Provided, however, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.
(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and nominees for each office which will appear on the general election ballot for each political party or as nominees with no party affiliation unless those persons have actually been nominated by an independent party and, as the case may be, for the nonpartisan candidates to be voted for at the general election:

(1) All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the offices and candidates for each office and the manner of designating the parties shall be as follows:

(A) The offices shall be listed in the same order in which they appear on the ballot;

(B) The candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate’s political party affiliation or independent status shall be indicated by the one- or two-letter initial specifying the affiliation, placed in parenthesis to the right of the candidate’s name; and

(C) The candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate’s affiliation shall be indicated as provided in paragraph (B) of this subdivision.
(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of §59-3-1 et seq. of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of §59-3-1 et seq. of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows:

(A) The words “official list of nominees and issues”, the name of the county, the words “General Election” and the date of the election shall be printed in all capital letters and in bold type no smaller than 14 point; and

(B) The names of the candidates and the initial within parenthesis designating the candidate’s affiliation shall be printed in all capital letters in bold type no smaller than 10 point and the residence information shall be printed in type no smaller than 10 point; and
(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than 12 point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.

CHAPTER 106

(S. B. 675 - By Senators Maynard, Mann, Beach, Cline, Facemire, Hamilton, Hardesty, Prezioso, Roberts, Rucker, Smith, Stollings and Sypolt)

[Passed March 6, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §22-15A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-15A-3a, all relating to requiring the Department of Environmental Protection to create and implement an Adopt-A-Stream Program; encouraging the removal of litter along West Virginia’s rivers and streams by volunteers; and allowing the Litter Control Fund to be used to fund the program.

Be it enacted by the Legislature of West Virginia:
ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.

(a) After July 1, 2005, the litter control and recycling programs heretofore operated and managed by the Division of Natural Resources shall transfer to the Department of Environmental Protection.

With the transfer of the West Virginia Litter Control and Recycling Programs from the jurisdiction of the Division of Natural Resources to the jurisdiction of the Department of Environmental Protection, all records, assets, and contracts, along with rights and obligations thereunder, obtained or signed on behalf of the Litter Control and Recycling Programs are hereby transferred and assigned to the Department of Environmental Protection.

(b) The Commissioner of the Division of Natural Resources and the Secretary of the Department of Environmental Protection shall determine which employees of the Division of Natural Resources will be transferred to the Department of Environmental Protection. All employees including administrators of the litter control and recycling programs are subject to being transferred to the Department of Environmental Protection. Employees in the classified service who have gained permanent status as of the effective date of this article, enacted during the 2005 regular session of the Legislature, will not be subject to further qualifying examination in their respective classifications by reason of the transfer required by the provisions of this section. Nothing contained in this section may be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in §29-6-1 et seq. of this code or to preclude the reclassification or reallocation of positions in accordance
with procedures set forth in that article. The Division of Personnel shall work with the commission and secretary to efficiently transfer employees from the Division of Natural Resources to the Department of Environmental Protection.

(c) In addition to all other powers, duties, and responsibilities granted and assigned to the Secretary of the Department of Environmental Protection in this chapter and elsewhere by law, the secretary, in the administration of the West Virginia Litter Control Program created by this section, shall:

(1) Coordinate all industry and business organizations seeking to aid in the litter control and recycling effort;

(2) Cooperate with all local governments to accomplish coordination of local litter control and recycling efforts;

(3) Encourage, organize, coordinate, and increase public awareness of and participation in all voluntary litter control and recycling campaigns, including citizen litter watch programs, seeking to focus the attention of the public on the litter control and recycling programs of the state and local governments and of private recycling centers;

(4) Recommend to local governing bodies that they adopt ordinances similar to the provisions of §22-15A-4 of this code;

(5) Investigate the methods and success of techniques of litter control, removal, and disposal utilized in other states, and develop, encourage, organize, and coordinate local litter control programs funded by grants awarded pursuant to subsection (d) of this section utilizing such successful techniques;

(6) Investigate the availability of, and apply for, funds available from any and all private or public sources to be used in the litter control program created by this section;
(7) Attract to the state persons or industries that purchase, process, or use recyclable materials;

(8) Contract for the development, production, and broadcast of radio and television messages promoting the West Virginia Litter Control Program. The messages should increase public awareness of and promote citizen responsibility toward the reduction of litter; and

(9) Encourage, organize, coordinate, and increase public awareness of, and participation in, a volunteer litter reporting program statewide.

(d) All authority to promulgate rules pursuant to §29A-3-1 et seq. of this code establishing criteria for awarding direct or matching grants for the study of available research and development in the fields of litter control, removal, and disposal, methods for the implementation of such research and development, and the development of public educational programs concerning litter control is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature: Provided, That any rule promulgated by the Division of Natural Resources relating to such grants shall remain in force and effect as though promulgated by the Department of Environmental Protection until the Secretary amends the rules in accordance with the provisions of §29A-3-1 et seq. of this code.

(e) All authority to promulgate rules pursuant to §29A-3-1 et seq. of this code designating public areas where litter receptacles shall be placed and the minimum number of litter receptacles in accordance with §22-15A-4(g) of this code is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature. Any rule promulgated by the Division of
Natural Resources relating to littering receptacles shall remain in effect as if promulgated by the secretary until amended by the secretary.

(f) Commencing on July 1, 2019, the secretary shall expend annually at least 30 percent of the moneys credited to the Litter Control Fund in the previous fiscal year for matching grants to counties and municipalities for the initiation and administration of litter control programs. The secretary shall promulgate rules pursuant to §29A-3-1 et seq. of this code establishing criteria for the awarding of matching grants.

(g) The Secretary of the Department of Environmental Protection in cooperation with the Commissioner of Highways, the Department of Commerce, the West Virginia State Police, the United States Forestry Service, and other local, state, and federal law-enforcement agencies shall be responsible for the administration and enforcement of all laws and rules relating to the maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys, streams, rivers, and any other private or public areas of the state. These other agencies shall make recommendations to the secretary, from time to time, concerning means and methods of accomplishing litter control consistent with the provisions of this chapter. The cooperation shall include, but not be limited to, contracts with the Commissioner of Highways to operate a litter control program.

(h) All other state agencies and local governments shall cooperate with the secretary in effecting the purposes of the litter control program.


(a) The Adopt-A-Highway Program was established in the late 1980s to improve the quality of the state’s environment by encouraging public involvement in the elimination of highway litter. That program is cosponsored
by the Division of Highways and the Department of Environmental Protection, Rehabilitation Environmental Action Plan. Its objective is to save taxpayer money by increasing public awareness and to serve as an educational tool by focusing on the consequences of littering. The program offers volunteers the opportunity to take charge of their own environment by making a positive effort to create a cleaner, more aesthetic place in which to live.

In West Virginia there are currently 25,000 volunteers who regularly pick up litter on 4,000 miles of highway. They have been responsible for removing more than 40 million pounds of litter since the program began.

(b) As with the Adopt-A-Highway Program, individuals, families, churches, businesses, schools, civic organizations, government agencies, scouting groups, fraternities, and communities may participate in an Adopt-A-Stream Program, which the department shall create and implement. Anyone who is at least 12 years old may participate. Any stream or river that is a part of the West Virginia Stream Partners Program is eligible for adoption, with the exception of streams or rivers considered unsafe. Volunteers may select a stream or river to adopt and then have it approved by the department, or they may ask the department to suggest an adoptable stream or river. Adopted streams must be at least one mile long. The Litter Control Fund may be used to support the Adopt-A-Stream Program.

(c) Adoptions are for a period of one year, during which time one cleanup is required per year. As volunteers pick up litter, bags that have been filled are placed on stream sides for removal and disposal by the program. Garbage bags, safety vests, safety training, traffic warning signs, and gloves are to be furnished by the program.

(d) Adopted streams may be identified by a sign at each end of the section bearing the Adopt-A-Stream logo and the name of the adopter. Volunteers who complete one required
AN ACT to amend and reenact §36-8-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §36-8-2a, all relating to providing for the specific escheat of United States savings bonds and all rights and legal title thereto; defining “United States savings bond”; providing that a United States savings bond held or owing in West Virginia shall be presumed abandoned if the last known address of the owner is in West Virginia and the United States savings bond has remained unclaimed and unredeemed for a period of five years after final maturity; setting forth a procedure by which abandoned, lost, stolen and destroyed United States savings bonds may escheat to the state; requiring the State Treasurer to commence a civil action for a determination that a United States savings bond shall escheat to the state; requiring service by publication; providing that claimants may appear in court to defend their right to the subject bond or bonds; requiring the court to enter a judgment vesting title in the state if the State Treasurer has substantially complied with required procedure and no valid claim is made for a United States savings bond; requiring the Treasurer to redeem United States savings bonds that have escheated to the state; permitting the State Treasurer
to pay collection and recovery costs from United States savings bond proceeds; requiring the State Treasurer to deposit remaining balance of proceeds into the Unclaimed Property Fund; permitting persons to file claims for escheated United States savings bonds or proceeds thereof after a United States savings bond has escheated to the state; and barring subsequent actions against the state after payment has been made to a claimant.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-1. Definitions.

As used in this article:

1) “Administrator” means the State Treasurer.

2) “Apparent owner” means a person whose name appears on the records of a holder as the person entitled to property held, issued or owing by the holder.

3) “Business association” means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility or other business entity consisting of one or more persons, whether or not for profit.

4) “Domicile” means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

5) “Financial organization” means a savings and loan association, bank, banking organization or credit union.

6) “Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.
(7) “Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection and workers’ compensation insurance.

(8) “Mineral” means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) “Mineral proceeds” means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. 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.

(10) “Money order” includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or
any other instrument sold by a financial organization if the
seller has obtained the name and address of the payee.

(11) “Owner” means a person who has a legal or
 equitable interest in property subject to this article or the
 person’s legal representative. The term includes a depositor
 in the case of a deposit, a beneficiary in the case of a trust
 other than a deposit in trust, and a creditor, claimant or
 payee in the case of other property.

(12) “Person” means an individual, business
 association, financial organization, estate, trust,
 government, governmental subdivision, agency or
 instrumentality, or any other legal or commercial entity.

(13) “Property” means tangible personal property
 described in section three of this article or a fixed and
certain interest in intangible personal property that is held,
issued or owed in the course of a holder’s business, or by a
government, governmental subdivision, agency or
instrumentality, and all income or increments therefrom.
The term includes property that is referred to as or
evidenced by:

(i) Money, a check, draft, warrant for payment issued by
the State of West Virginia, deposit, interest or dividend;

(ii) Credit balance, customer’s overpayment, gift
 certificate, security deposit, refund, credit memorandum,
unpaid wage, unused ticket, mineral proceeds or
unidentified remittance;

(iii) Stock or other evidence of ownership of an interest
in a business association or financial organization;

(iv) A bond, debenture, note or other evidence of
indebtedness;

(v) Money deposited to redeem stocks, bonds, coupons
or other securities or to make distributions;
(vi) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance or health and disability insurance; and

(vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits.

(14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(16) “United States savings bond” means property, tangible or intangible, in the form of a savings bond issued by the United States Treasury whether in paper form, electronic or paperless form, along with the proceeds thereof.

(17) “Utility” means a person who owns or operates for public use any plant, equipment, real property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas as defined in §24-1-2 of this code.

§36-8-2a. Escheat of United States savings bonds.

(a) Notwithstanding any other section of this article or any other section of this code to the contrary, United States savings bonds held or owing in this state by any person, or issued, or owed, in the course of a holder’s business, by a state or other government, governmental subdivision,
agency, or instrumentality, and all proceeds thereof, shall be presumed abandoned in the state if:

(1) The last known address of the owner of the United States savings bond is in this state; and

(2) The United States savings bond has remained unclaimed and unredeemed for a period of five years after final maturity.

(b) United States savings bonds which are presumed abandoned under §36-8-2a(a) of this code, including bonds in the possession of the administrator, and those lost, stolen or destroyed bonds registered to persons with last known addresses in this state, shall, upon satisfaction by the administrator of the requirements of §36-8-2a(c) through (e) of this code, escheat to the State of West Virginia one year after such bonds are presumed abandoned, and all property rights and legal title to, and ownership of, the United States savings bonds or proceeds from the bonds, including all rights, powers and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the State of West Virginia, subject only to the provisions of §36-8-15 and §36-8-16 of this code.

(c) After the expiration of the one-year period prescribed in §36-8-2a(b) of this code, if no claim has been filed pursuant to the provisions of §36-8-15 and §36-8-16 of this code for such United States savings bonds, but before such savings bonds escheat to the State of West Virginia, a civil action must be commenced by the administrator in the circuit court of Kanawha County, or in any other court of competent jurisdiction, for a determination that such United States savings bonds shall escheat to the State of West Virginia.

(d) The administrator shall make service by publication of the civil action in accordance with Rule 4(e) of the West Virginia Rules of Civil Procedure.
(e) Any person claiming ownership, including all persons claiming rights, powers and privileges of survivorship and any co-owner or beneficiary, or his or her agent, may appear and defend his or her rights to the subject bond or bonds, and if the court is satisfied that the claimant is entitled to the bond or bonds, the court may award judgment in the claimant’s favor. If no person files a claim or appears at the hearing to substantiate a claim, or if the court determines that a claimant is not entitled to the property claimed by such claimant, then the court, if satisfied by evidence that the administrator has substantially complied with this section, shall enter a judgment that the subject United States savings bonds have escheated to the State of West Virginia, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall vest solely in the State of West Virginia.

(f) Upon being awarded a judgment that the United States savings bond or bonds have escheated to the State of West Virginia, the administrator shall redeem such United States savings bonds. Upon recovery of the proceeds of any United States savings bonds, the administrator shall first pay all costs incident to the collection and recovery of such proceeds from the proceeds of such United States savings bonds and shall thereafter promptly deposit the remaining balance of such proceeds into the Unclaimed Property Fund pursuant to §36-8-13 of this code.

(g) Notwithstanding any other section of this article or any other section of this code to the contrary, any person making a claim for a United States savings bond escheated to the State of West Virginia under this section, or for the proceeds of such bond, may file a claim with the administrator pursuant to §36-8-15 of this code. Upon receipt of sufficient proof of the validity of such person’s claim, the administrator may, in his or her sole discretion, pay such claim less any expenses and costs which have been
incurred by the state in securing full title and ownership of such property by escheat. If payment has been made to any claimant, no action thereafter may be maintained by any other claimant against the state or any officer thereof, for, or on account of, such funds.

CHAPTER 108

(Com. Sub. for H. B. 2609 - By Delegates Nelson, Criss and Espinosa)

[Passed March 4, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating to presumptions of abandonment and indication of ownership in demand, savings and time deposits held by a financial institution.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-2. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler’s check, 15 years after issuance;

(2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most
recent dividend, stock split or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A noninterest bearing demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; an interest bearing demand, savings or time deposit including a deposit that is automatically renewable, seven years after the earlier of maturity or the date of the last indication by the owner of interest in the property. A deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) Gift certificate, three years after December 31, of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 percent of the certificate’s face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would
have attained if living, the limiting age under the mortality

table on which the reserve is based;

(9) Property distributable by a business association or

financial organization in a course of dissolution, one year

after the property becomes distributable;

(10) Property received by a court as proceeds of a class

action, and not distributed pursuant to the judgment, one

year after the distribution date;

(11) Property held by a court, government,
governmental subdivision, agency or instrumentality, one

year after the property becomes distributable;

(12) Wages or other compensation for personal services,
one year after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility,
two years after the deposit or refund becomes payable;

(14) Property in an individual retirement account,
derived benefit plan or other account or plan that is qualified
for tax deferral under the income tax laws of the United
States, three years after the earliest of the date of the
distribution or attempted distribution of the property, the
date of the required distribution as stated in the plan or trust
agreement governing the plan, or the date, if determinable
by the holder, specified in the income tax laws of the United
States by which distribution of the property must begin in
order to avoid a tax penalty;

(15) Warrants for payment issued by the State of West
Virginia which have not been presented for payment, within
six months of the date of issuance;

(16) All funds held by a fiduciary, including the state
Municipal Bond Commission, for the payment of a note,
bond, debenture or other evidence or indebtedness, five
years after the principal maturity date, or if such note, bond,
debenture or evidence of indebtedness is called for
redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture or other evidence of indebtedness; and

(17) All other property, five years after the owner’s right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner’s interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;
(3) The making of a deposit to or withdrawal from a bank account;

(4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions; and

(5) For demand, savings and time deposits held by a financial organization, any indication of the owner’s interest in any demand, savings and time deposit held by the financial organization for that owner is an indication of the owner’s interest in all demand, savings and time deposits held by that financial organization.

(e) Property is payable or distributable for purposes of this article notwithstanding the owner’s failure to make demand or present an instrument or document otherwise required to obtain payment.

CHAPTER 109

(H. B. 2746 - By Delegate Shott)

[By Request of the West Virginia State Bar]

[Passed February 28, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-2-19a; and to amend and reenact §44-3A-24 of said code, all relating to administration of estates; requiring reports by fiduciary commissioners of unprogressed estates; allowing the county
commission to close an estate administratively; providing an appeal procedure; and providing that personal representatives are liable for failure to all persons with an interest in the assets of such an estate.

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

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDE NTS.**

§44-2-19a. Reports of delinquent filings and administrative closing of unprogressed estates.

(a) On the last day of December and June of each year every fiduciary commissioner shall file with the county clerk a list of all estates referred to him or her since the effective date of this section, either generally or for a limited purpose, in which any document required to be filed with him or her in a specified time has not been timely filed, stating the document whose filing is delinquent and the date the same was due to be filed: *Provided,* That the commissioner shall omit from such list any estate and any document for whose filing a proper continuance has been granted.

(b) On January 5 and July 5 of each year the county clerk shall file with the county commission a like list of estates since the effective date of this section in which the filing of any paper is delinquent, and embrace therein the lists required to be filed with him or her on the first day of such month by the various commissioners. In the report filed July 5 of each year the county clerk shall further include in the report a list of all estates referred to him or her since the effective date of this section which have not been duly closed within a period of three years from the opening of such estate and in which no progress, or in his or her opinion, unsatisfactory progress, has been made toward settlement, for any cause, within the preceding 12 months.

(c) The county commission shall, upon the presentation by the county clerk of all matters and causes reported to it
by the semiannual reports required herein of delinquent and
unprogressed estates, enter an order in the name of the
county commission directing the appointed personal
representative to file a statement to show cause why the
county commission should not find the personal
representative delinquent in his or her administration of the
respective estate and should not remove the personal
representative from office, administratively close the estate,
or take such other action against the personal representative
as may be proper:

(1) The order to show cause shall be mailed by the
county clerk to the personal representative at the last known
address appearing in the records of the county clerk and a
copy thereof shall also be mailed to the heirs at law,
beneficiaries under the will, any creditors who have filed
claims which are not released, any surety on any bond, and
any other person interested in the estate at their last known
addresses appearing in the records of the county clerk.

(2) The personal representative shall have 30 days after
the mailing of the order to show cause to file properly any
delinquent documents required for the administration of the
estate or to file a verified statement under oath stating why
he or she should not be found delinquent in the
administration of the respective estate and should not be
removed from office or the estate administratively closed.

(3) If within such 30-day time period the personal
representative fails to file properly the delinquent documents
or fails to file a verified statement or files a verified statement
which the county clerk upon review finds and determines does
not present good cause, the county clerk shall give notice of
such failure, delinquency, or finding to the county
commission, the personal representative, the heirs at law,
beneficiaries under the will, any creditors who have filed
claims which are not released, any surety on any bond, and any
other person interested in the estate and shall advise that the
personal representative shall be removed from office and such
other appropriate person appointed as personal representative
as the county commission may determine or that the estate shall be administratively closed 30 days following the date of such notice at a hearing thereon to be held before the county commission at a date and time fixed for presentation. In addition, on the first Monday of the next month, the county clerk shall publish as a Class I-0 legal advertisement, a notice thereof.

(4) The personal representative or any person interested may file objection thereto at or prior to the time set by such notice for presentation thereof to the county commission. The commission shall proceed to hear the presentation of such proposed removal or closing and findings and hear interested parties, if any appear, and may enter such appropriate order to approve, modify and approve, or refuse to approve such proposed removal or closing and the findings of the county clerk. An appeal from the decision of such county commission may, without any formal bill of exceptions, be taken to the circuit court of the county by the personal representative or any interested party. The appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the county clerk and the county commission.

(d) In addition, the county clerk and the fiduciary commissioners, shall be empowered, and where appropriate, may, on their own motion, petition the circuit court to compel compliance with the provisions of this chapter, in the same manner and to the same extent heretofore provided in the case of commissioners of accounts, or by any other proper proceeding.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDEENTS; COUNTY OPTION.


(a) On the last day of December and June of each year every fiduciary commissioner and special fiduciary
commissioner shall file with the fiduciary supervisor a list of all estates referred to him or her since the effective date of this section, either generally or for a limited purpose in which any appraisement or other document required to be filed with him or her in a specified time has not been timely filed, stating the document whose filing is delinquent and the date the document was due to be filed: Provided, That the commissioner shall omit from the list any estate and any document for whose filing a proper continuance has been granted.

(b) On January 5 and July 5 of each year the fiduciary supervisor shall file with the county commission a like list of estates referred to him or her since the effective date of this section in which the filing of any paper is delinquent, and embrace therein the lists required to be filed with him or her on the first day of the month by the various commissioners. In the report filed July 5 of each year the fiduciary supervisor shall further include in the report a list of all estates referred to him or her since the effective date of this section which have not been duly closed and in which no progress, or in his or her opinion, unsatisfactory progress, has been made toward settlement, for any cause, within the preceding 12 months.

(c) The county commission, after consultation with the fiduciary supervisor shall take care to require prompt disposition of all matters and causes reported to it by the semiannual reports required herein of delinquent and unprogressed estates; enter an order in the name of the county commission directing the appointed personal representative to file a statement to show cause why the county commission should not find the personal representative delinquent in his or her administration of the respective estate and should not remove the personal representative from office; administratively close the estate; or take such other action against the personal representative as may be proper.
(1) The order to show cause shall be mailed by the fiduciary supervisor to the personal representative at the last known address appearing in the records of the fiduciary supervisor. A copy of the order shall also be mailed to the heirs at law, beneficiaries under the will, any creditors who have filed claims which are not released, any surety on any bond, and any other person interested in the estate at their last known addresses appearing in the records of the fiduciary supervisor.

(2) The personal representative shall have 30 days after the mailing of the order to show cause to file properly any delinquent documents required for the administration of the estate or to file a verified statement, under oath, stating why he or she should not be found delinquent in the administration of the respective estate and should not be removed from office or the estate administratively closed.

(3) If, within the 30-day time period, the personal representative fails to file properly the delinquent documents, or fails to file a verified statement, or files a verified statement which the fiduciary supervisor upon review finds and determines does not present good cause, the fiduciary supervisor shall give notice of the failure, delinquency, or finding to the county commission, the personal representative, the heirs at law, beneficiaries under the will, any creditors who have filed claims which are not released, any surety on any bond, and any other person interested in the estate and shall advise that the personal representative shall be removed from office and such other appropriate person appointed as personal representative as the county commission may determine or that the estate shall be administratively closed 30 days following the date of the notice at a hearing thereon to be held before the county commission at a date and time fixed for presentation. In addition, on the first Monday of the next month, the fiduciary supervisor shall publish a notice of this action as a Class I-0 legal advertisement.
(4) The personal representative or any person interested may file an objection at, or prior to, the time set by the notice for presentation to the county commission. The commission shall proceed to hear the presentation of the proposed removal or closing and findings and hear interested parties, if any appear, and may enter an appropriate order to approve, modify and approve, or refuse to approve, the proposed removal or closing and the findings of the fiduciary supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner generally for supervision or for the purpose of the resolution of any disputed matter. An appeal from the decision of the county commission may, without any formal bill of exceptions, be taken to the circuit court of the county by the personal representative or any interested party. The appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the fiduciary supervisor and the county commission.

(d) In addition, the fiduciary supervisor and the fiduciary commissioners, shall be empowered, and where appropriate, shall on their own motion, petition the circuit court to compel compliance with the provisions of this chapter, in the same manner and to the same extent heretofore provided in the case of commissioners of accounts, or by any other proper proceeding.
section, designated §44-1-14b, all relating to the administration of estates and providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration.

Be it enacted by the Legislature of West Virginia:

CHAPTER 41. WILLS.

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-13. Ancillary administration; Probate or recordation of foreign will.

(a) Where a will relative to any personalty or real estate located or situate within this state has been proved or probated outside of this state by another state or jurisdiction within the United States of America, an authenticated copy thereof and the certificate of probate thereof, by such other state or jurisdiction may be offered for probate in this state, in accordance with the provisions of §41-5-5 or §41-5-10 of this code, and an ancillary personal representative, executor, or administrator, as the case may be, may be appointed in this state with like effect and with the same powers, authorities, duties, and liabilities as are given to domiciliary personal representatives, executors, and administrators under the provisions of this code.

(b) Where a will, relative only to real estate situate within this state, has been proved or probated outside of this state by another state or jurisdiction within the United States of America and no appointment of an ancillary personal representative, executor, or administrator to administer the real estate within this state is necessary for any proper purpose, an authenticated copy thereof and the certificate of probate thereof may be admitted to record in any county of this state in which the real estate is situate by any person having an interest in the real estate, including a personal representative who has qualified in the other state or jurisdiction.
(1) The interested person or personal representative shall also execute and tender for recording in the county an affidavit setting forth in substance:

(A) A description of the real estate owned by the decedent at the time of his or her death situate within the county in this state where the affidavit is to be recorded together with its assessed value for tax purposes and its fair market value at the date of death of the decedent;

(B) That the decedent died testate a nonresident of this state and that the authenticated copy of the will and the certificate of probate of the other state or jurisdiction is being or has been recorded in the county; and

(C) The names and last known addresses of the personal representative of the decedent’s estate, if any, and of the decedent’s devisees or beneficiaries who are devised or given the real estate under the will.

(2) The clerk of the county commission shall record and index the affidavit, together with the authenticated copy of the will and the certificate of probate, in the same manner and upon the same fees as wills and affidavits of beneficiaries or heirs are recorded and indexed in case of probate administration with appointment of a personal representative. The clerk of the county commission may require a certified copy of the decedent’s death certificate or other proof of death and residence prior to fulfilling the clerk’s responsibilities under this chapter.

(3) A bond, security, or oath is not required when no appointment of an ancillary personal representative, executor, or administrator is made under the provisions of this section.

(c) A document substantially in the following form may be used as the affidavit provided in subsection (b) of this section with the effect as prescribed in this section:
THE COUNTY COMMISSION OF __________
COUNTY, WEST VIRGINIA

IN RE:   THE ESTATE OF ______________________

DOD:  _____________________

AFFIDAVIT FOR ANCILLARY
ADMINISTRATION

OF WEST VIRGINIA REAL ESTATE
WITHOUT APPOINTMENT
(TESTATE)

STATE OF ________________,
COUNTY OF ______________, to-wit:
I, ______________________________, whose address is
being first duly sworn, upon oath and under penalty of perjury,
do depose and say as follows:

1. The decedent, ________________________________, died
testate (with a will) on _____________________(date of
death), a resident of ___________ County, State of
____________________.

2. On ____________________ (date), the following
person(s) was/were appointed as the personal representative
of the Estate of ____________________ by the
___________________(name of foreign court), of
___________ (county), ________________(state), being
case number _______________, if applicable:

a. Name: ________________________________

Address: ___________________________________

b. Name: ________________________________
3. An authenticated copy of the Last Will and Testament dated ___________ and the certificate of probate of such other state or jurisdiction is being furnished herewith for recording in this County.

4. The Decedent died owning and possessing the following real estate situate in West Virginia:

<table>
<thead>
<tr>
<th>Description</th>
<th>County</th>
<th>Assessed Value</th>
<th>Fair Market value</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
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<td>b.</td>
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<td>d.</td>
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<td>Total</td>
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</tr>
</tbody>
</table>

5. Pursuant to the provisions of the Last Will and Testament of ________________, the decedent devised the aforesaid real estate to the following beneficiaries of the estate:

a. Name: ________________________________
   Address: ________________________________
   Relationship to Decedent: ______________
   Share or percentage: __________

b. Name: ________________________________
   Address: ________________________________
   Relationship to Decedent: ______________
6. The Estate of _______________, the decedent, will be/has been fully administered by the domiciliary personal representative under the domiciliary proceedings in the other state or jurisdiction. No appointment of an ancillary personal representative to administer the decedent’s real estate within the State of West Virginia is necessary for any proper purpose.

7. I have personal knowledge of the above facts and am interested in the Estate of ________________, the decedent, as the ( ) acting domiciliary personal representative, ( ) surviving spouse, ( ) beneficiary under the decedent’s will, ( ) heir at law, or ( ) other ____________________ (describe relationship or interest). [Check one]

_____________________________________

Signature of Affiant

Taken, subscribed, and sworn to before me the undersigned authority by ________________________________, this day of __________, 20__. 
(d) When the authenticated copy of the will and the certificate of probate is so offered, as provided in subsection (a) of this section, the county commission, or the clerk thereof in the vacation of the commission, to which or to whom it is offered, shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator’s domicile, and shall admit the copy to probate as a will of personalty in this state; and if it appears from the copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of land in this state by the laws thereof, the copy may be admitted to probate as a will of real estate. But any person interested may, within one year from the time the authenticated copy is admitted to record, and so probated, upon reasonable notice to the parties interested, object to the same and have the order admitting the same to probate in this state set aside, upon due and satisfactory proof that the authenticated copy was not a true copy of the will, or that the probate of the will has been set aside by the court by which it was admitted to probate, or that the probate was improperly made.

(e) Notwithstanding anything in this section to the contrary, where an original will of a nonresident decedent exists but has not been proved or probated outside of this state by another state or jurisdiction within the United States of America because the provisions of the laws of the state or jurisdiction do not require the proof or probate of the will, the original of the will may be offered for probate in this state as provided in subsection (a) of this section or may be
admitted to record as provided in subsection (b) of this section.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-4. Appointment of intestate administrator; affidavit of heirs of nonresident intestate decedent without appointment of intestate administrator.

(a) When a person dies intestate the jurisdiction to hear and determine the right of administration of his or her estate shall be in the county commission or clerk thereof during the recess of the regular sessions of the county commission which would have jurisdiction as to the probate of his or her will, if there were one. Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife, and then such of the others entitled to distribution as the county commission or clerk shall see fit. If no distributee apply for administration within 30 days from the death of the intestate, the county commission or clerk may grant administration to one or more of the creditors of the decedent, or to any other person who shall be fit.

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Any person having an interest in real estate situate in this state that was seized and possessed by a decedent who was a nonresident of this state and who has died intestate without any will, including a personal representative who has qualified in another state or jurisdiction, for which no appointment of an ancillary personal representative or administrator to administer the real estate within this state is necessary for any proper purpose may execute and tender for recording in the county an affidavit setting forth in substance:
(A) A description of the real estate owned by the nonresident decedent at the time of his or her death situate within the county where the affidavit is to be recorded together with its assessed value for tax purposes and its fair market value at the date of death of the decedent;

(B) That the nonresident decedent died intestate without any will presented or probated in this state or in any other state or jurisdiction;

(C) That more than 60 days have passed since the death of the decedent and no personal representative or administrator of the decedent’s estate has been otherwise appointed in this state for any proper purpose; and

(D) The names and last known addresses of the decedent’s heirs at law determined under the laws of this state entitled to the real estate situate in this state.

(2) The clerk of the county commission shall record and index the affidavit in the same manner and upon the same fees as affidavits of heirs are recorded and indexed in case of intestate administration with appointment of a personal representative. The clerk of the county commission may require a certified copy of the decedent’s death certificate or other proof of death and residence prior to fulfilling the clerk’s responsibilities under this chapter.

(3) A bond, security, or oath is not required when no appointment of an ancillary personal representative or administrator is made under the provisions of this section.

(c) A document substantially in the following form may be used as the affidavit provided in subsection (b) of this section with the effect as prescribed in this section:

THE COUNTY COMMISSION OF__________
COUNTY, WEST VIRGINIA
IN RE:   THE ESTATE OF __________________________

DOD: _____________________

AFFIDAVIT FOR ANCILLARY ADMINISTRATION

OF WEST VIRGINIA REAL ESTATE

WITHOUT APPOINTMENT

(INTESTATE)

STATE OF ______________,  
COUNTY OF ______________, to-wit:

I, ______________________________, whose address is _____________________________________, being first duly sworn, upon oath and under penalty of perjury, do depose and say as follows:

1. The decedent, _____________________________, died on _____________________(date of death), a resident of ___________ County, State of ____________________. The decedent has left no will so far as I know, and no will of the decedent has been presented or probated in this state or in any other state or jurisdiction.

2. More than 60 days have passed since the death of the decedent and no personal representative or administrator of the decedent’s estate has been otherwise appointed in the State of West Virginia for any proper purpose.

3. A certified death certificate has been furnished herewith for filing in this County.

4. The Decedent died owning and possessing the following real estate situate in West Virginia:
5. The decedent, ____________________, left as his/her heirs at law in accordance with the laws of intestate descent and distribution of the State of West Virginia the following persons:

a. Name: ________________________________________
   Address: ________________________________________
   Relationship to Decedent: _________________________
   Share or percentage: __________

b. Name: ________________________________________
   Address: ________________________________________
   Relationship to Decedent: _________________________
   Share or percentage: __________

c. Name: ________________________________________
   Address: ________________________________________
   Relationship to Decedent: _________________________
   Share or percentage: __________

d. Name: ________________________________________
   Address: ________________________________________
   Relationship to Decedent: _________________________
   Share or percentage: __________

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<td>d. Name:</td>
<td>________________________________________</td>
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<tr>
<td>Address:</td>
<td>________________________________________</td>
</tr>
<tr>
<td>Relationship to Decedent:</td>
<td>___________________________</td>
</tr>
<tr>
<td>Share or percentage:</td>
<td>__________</td>
</tr>
</tbody>
</table>

6. No appointment of an ancillary personal representative to administer the decedent’s real estate within the State of West Virginia is necessary for any proper purpose.

7. I have personal knowledge of the above facts and am interested in the Estate of ________________, the decedent, as the ( ) acting domiciliary personal representative,

( ) surviving spouse, ( ) beneficiary under the decedent’s will, ( ) heir at law, or ( ) other ________________ (describe relationship or interest). [Check one]

______________________________  
Signature of Affiant

Taken, subscribed, and sworn to before me the undersigned authority by _________________________________, this ______ day of __________, 20__.

{seal}

My Commission expires: ___________________________

______________________________  
Notary Public

§44-1-14b. Notice of ancillary filing without any administration of estate; time limits for filing of objections.

1 (a) Within 30 days of the filing of a foreign will of a nonresident of this state without appointment of an ancillary
personal representative, executor, or administrator as provided in the provisions of §41-5-13(b) of this code or within 30 days of the filing of an affidavit concerning the intestacy of a nonresident of this estate without appointment of an ancillary intestate administrator as provided in the provisions of §44-1-4(b) of this code, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the filing of the foreign will or the affidavit, a notice which is to include:

(1) The name and last known address of the decedent;

(2) The name and address of the county commission before whom the foreign will or affidavit has been filed and a statement that no appointment or administration is being made pursuant to the provisions of law but that a foreign will or affidavit of heirs of the decedent has been filed with the county commission;

(3) The name and address of the party filing the foreign will or affidavit and his or her relationship to the decedent;

(4) The date of first publication of the notice;

(5) A statement that an interested person objecting to the filing of the foreign will or affidavit or objecting to the absence of appointment or administration being made in this state must be filed with the county commission within 60 days after the date of first publication or 30 days of service of the notice, whichever is later.

(b) This notice shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication of the notice is equivalent to personal service on creditors, devisees or beneficiaries under the will, and heirs at law of the decedent.

(c) The party filing the foreign will or affidavit shall, not later than 30 days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of
this section, at the last known address by first class mail, postage prepaid or by personal service on the following persons:

(1) The decedent’s surviving spouse, if any;

(2) If there is a will, the personal representative or personal representatives named therein;

(3) If there is a will, all devisees or beneficiaries named therein;

(4) The heirs at law of the decedent determined under the laws of this state; and

(5) Any known creditors of the decedent residing or located in this state or who may claim a lien or interest against the real estate of the decedent situate in this state.

(d) Any person interested in the estate who objects to the filing of the foreign will or affidavit or objects to the absence of appointment or administration being made in this state shall file notice of an objection with the county commission within 60 days after the date of the first publication as required in subsection (a) of this section or within 30 days after service of the notice as required by subsection (c) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred. The county commission upon receiving any timely objection thereto shall schedule a hearing or hearings thereon and order relief, if any, it considers proper including, but not limited to, an order directing that full and complete ancillary administration of the estate of the nonresident decedent be made in this state.

(e) The clerk of the county commission shall collect a fee that is the amount of the publication of the notice required in this section.
AN ACT to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended, relating to distributions from the State Excess Lottery Revenue Fund to racetrack purse funds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. STATE LOTTERY ACT.


(a) The State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants, or contributions received by the fund. All revenues received under the provisions of §29-22A-10b and §29-22A-10c of this code and under §29-22B-101 et seq., of this code, except the amounts due the commission under §29-22B-1408(a)(1) of this code, shall be deposited in the State Treasury and placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the State Auditor and the State Treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) $65 million into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State Treasury to be known as the
General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $10 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements.

For the fiscal year beginning July 1, 2003, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $17 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $7 million into the State Park Improvement Fund for Park Improvements.

(c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the fiscal year ending June 30, 2009, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $27 million into the
Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds: Provided, That for the fiscal year beginning July 1, 2008, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead $19 million shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission shall deposit: (1) $65 million into the General Purpose Account to be
expended pursuant to appropriation of the Legislature; (2) $29 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the Excess Lottery School Building Debt Service Fund created in §18-9D-6 of this code; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(e) The Legislature finds and declares that in order to attract new business, commerce, and industry to this state, to retain existing business and industry providing the citizens of this state with economic security, and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide
public financial support for constructing, equipping, improving, and maintaining economic development projects, capital improvement projects, and infrastructure which promote economic development in this state.

(1) The West Virginia Economic Development Authority created and provided for in §31-15-1 et seq., of this code shall, by resolution, in accordance with the provisions of this article and §31-15-1 et seq., of this code, and upon direction of the Governor, issue revenue bonds of the Economic Development Authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving, or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding 30 years from their respective dates. The principal of and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) The special revenue fund named the Economic Development Project Fund into which shall be deposited the amounts to be deposited in the fund as specified in subsections (b), (c), and (d) of this section is continued. The Economic Development Project Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants, or contributions received by the fund. 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, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption, or defeasance of the bonds. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the
revenues paid into the Economic Development Project Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued, from time to time, under the provisions of this article.

(3) After the West Virginia Economic Development Authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this subsection, any balance remaining in the Economic Development Project Fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by their terms, are then redeemable 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.

(4) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest, and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders’ remedies are limited in all respects to the Special Revenue Fund established in this subsection for the liquidation of the bonds.

(5) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for projects certified under the provision of this subsection: Provided, That the bond proceeds shall be expended in accordance with the requirements and provisions of §21-5A-1 et seq., of this code and either §5-22-1 et seq., or §5-22A-1 et seq., of this code, as the case may be: Provided, however, That if the bond proceeds are expended pursuant
to §5-22A-1 et seq., of this code and if the Design-Build Board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding the contract, the determination shall be conclusive for all purposes and shall be considered to satisfy all the requirements of said article.

(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the Governor, or his or her designee, the Secretary of the Department of Revenue, the Executive Director of the West Virginia Development Office, and six persons appointed by the Governor: Provided, That at least one citizen member must be from each of the state’s three congressional districts. The committee shall meet as often as necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within 30 days of the effective date of this section.

(7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled with the committee. Within 10 days from the effective date of this section as amended in the year 2003, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;
(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved, and the compensation reasonably anticipated to be paid persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) A grant may not be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality, or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state.

The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the Economic Development Authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date, and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least 14 days prior to the date of the public hearing.

(11) The committee may not certify a project unless the committee finds that the project is in the public interest and
the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields, parks, stadiums, and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities, and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers, and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting, and other facilities;

(G) Improvements at state parks, such as construction, expansion, or extensive renovation of lodges, cabins, conference facilities, and restaurants;

(H) Railroad bridges, switches, and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football, and soccer fields;

(J) State-owned buildings that are registered on the National Register of Historic Places;

(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping, and security systems to revitalize decaying downtown areas; and
(L) Other facilities that promote or enhance economic development, educational opportunities, or tourism opportunities thereby promoting the general welfare of this state and its residents.

(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the Economic Development Authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account in the State Treasury known as the Economic Development Project Bridge Loan Fund administered by the Economic Development Authority created in §31-15-1 et seq., of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq., of this code and upon fulfillment of the provisions of §5A-2-1 et seq., of this code. Loan repayment amounts, including the portion attributable to interest, shall be paid into the fund created in this subdivision.

(f) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c), (d), (i), and (m) of this section, the commission shall first make the distribution to the Economic Development Project Fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund; and fourth, make the distribution to the General Purpose Account: Provided, That, subject to the provisions of this subsection, to the extent the revenues are not pledged in support of revenue bonds which are or may be issued, from time to
time, under this section, the revenues shall be distributed on
a pro rata basis.

(g) Each fiscal year, the commission shall, after meeting
the requirements of subsections (b), (c), (d), (i), and (m) of
this section and after transferring to the State Lottery Fund
created under §29-22-18 of this code an amount equal to any
transfer from the State Lottery Fund to the Excess Lottery
Fund pursuant to §29-22-18(f) of this code, deposit 50
percent of the amount by which annual gross revenue
deposited in the State Excess Lottery Revenue Fund
exceeds $225 million in a fiscal year in a separate account
in the State Lottery Fund to be available for appropriation
by the Legislature.

(h) When bonds are issued for projects under
subsections (d) and (e) of this section or for the School
Building Authority, infrastructure, higher education, or park
improvement purposes described in this section that are
secured by profits from lotteries deposited in the State
Excess Lottery Revenue Fund, the Lottery Director shall
allocate first to the Economic Development Project Fund an
amount equal to one tenth of the projected annual principal,
interest, and coverage requirements on any and all revenue
bonds issued, or to be issued as certified to the Lottery
Director; and second, to the fund or funds from which debt
service is paid on bonds issued under this section for the
School Building Authority, infrastructure, higher education,
and park improvements an amount equal to one tenth of the
projected annual principal, interest, and coverage
requirements on any and all revenue bonds issued, or to be
issued as certified to the Lottery Director. In the event there
are insufficient funds available in any month to transfer the
amounts required pursuant to this subsection, the deficiency
shall be added to the amount transferred in the next
succeeding month in which revenues are available to
transfer the deficiency.

(i) Prior to the distributions provided in subsection (d)
of this section, the Lottery Commission shall deposit into
the General Revenue Fund amounts necessary to provide reimbursement for the refundable credit allowable under §11-21-21 of this code.

(j)(1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the Public Employees Insurance Agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(k) The Legislature further directs the Governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost-effective program possible for the senior citizens of this state; and by working closely with the state’s congressional delegation to ensure that a national program is implemented. The Legislature further directs that the Governor report his or her progress back to the Joint Committee on Government and Finance on an annual basis until a comprehensive program has been fully implemented.
(l) After all of the expenditures in subsections (a) through (i) of this section have been satisfied in any fiscal year, the next $2 million shall be distributed as follows:

(1) On the last day of the fiscal year that begins on July 1, 2010, and for each fiscal year thereafter, 46 percent shall be placed in the general purse fund of a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, for payment of regular purses;

(2) Forty-three and one-half percent shall be distributed to the racing commission special account — unredeemed pari-mutuel tickets, established on behalf of a thoroughbred racetrack licensee that did participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992;

(3) Five and one-half percent shall be distributed to the racing commission special account — unredeemed pari-mutuel tickets, established on behalf of a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992; and

(4) Five percent shall be distributed to the racing commission special account — Greyhound Breeding Development Fund.

(m) For the fiscal year beginning July 1, 2019, and subsequent fiscal years, the commission shall deposit $11 million to be distributed into the special funds established by the respective licensees and used for the payment of regular purses in addition to the other amounts provided in §19-23-1 et seq. of this code; such distribution shall be on a pro rata basis based upon the actual purse earnings of each such licensee as specified in §29-22A-10(c)(2) and §29-22A-10b(a)(2) of this code.
AN ACT to amend and reenact §29-22-9 of the Code of West Virginia, 1931, as amended, relating to types of lottery games to be conducted by the state Lottery Commission; removing restrictions on where certain traditional lottery games may be played; and conforming language to recently enacted legislation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines, or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

(a) The commission shall initiate operation of the state lottery on a continuous basis at the earliest feasible and practical time, first initiating operation of the preprinted instant winner type lottery. The lottery shall be initiated and shall continue to be operated so as to produce the maximum amount of net revenues to benefit the public purpose described in this article consonant with the public good.
agencies, and their officers shall cooperate with the Lottery Commission so as to aid the Lottery Commission in fulfilling these objectives.

(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery. These rules and regulations shall provide that:

(1) No lottery may use the results of any amateur or professional sporting event, dog race, or horse race to determine the winner except as authorized under §29-22D-1 et seq. of this code.

(2) Electronic video lottery systems must include a central site system of monitoring the lottery terminals utilizing an online or dial-up inquiry.

(3) In a lottery utilizing a ticket, each ticket shall bear a unique number distinguishing it from each other ticket.

(4) No lottery utilizing a machine may use machines which dispense coins or currency.

(5) Selection of the winner must be predicted totally on chance.

(6) Any drawings or winner selections shall be held in public and witnessed by an independent accountant designated by the director for such purposes.

(7) All lottery equipment and materials shall be regularly inspected and tested, before and after any drawings or winner selections, by independent qualified technicians.

(8) The director shall establish the price for each lottery and determine the method of selecting winners and the manner of payment of prizes, including providing for payment by the purchase of annuities for prizes payable in installments.
(9) All claims for prizes shall be examined and no prize shall be paid as a result of altered, stolen, or counterfeit tickets or materials, or which fail to meet validation rules or regulations established for a lottery. No prize shall be paid more than once and, in the event of a binding determination by the commission that more than one person is entitled to a particular prize, the sole remedy of the claimants shall be the award to each of them of an equal share in the single prize.

(10) A detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery, or the estimated odds of winning such prizes shall be printed on any lottery ticket, where feasible, or in descriptive materials, and shall be available at the offices of the commission.

(11) No prizes shall be paid which are invalid and not contemplated by the prize structure of the lottery involved.

(12) By purchasing a ticket or participation in a lottery, a participant agrees to abide by, and be bound by, the lottery rules which apply to the lottery or game play involved. An abbreviated form of such rules may appear on tickets and shall appear on descriptive materials and shall be available at the offices of the commission. A participant in a lottery agrees that the determination of whether the participant is a valid winner is subject to the lottery or game play rules and the winner validation tests established by the commission. The determination of the winner by the commission shall be final and binding upon all participants in a lottery and shall not be subject to review or appeal.

(13) The commission shall institute such security procedures as it deems necessary to ensure the honesty and integrity of the winner selection process for each lottery. All such security and validation procedures and techniques shall be, and remain, confidential and shall not be subject to any discovery procedure in any civil, judicial, administrative, or
other proceeding, nor subject to the provisions of §29B-1-1 et seq. of this code.

(c) The commission shall proceed with operation of such additional lottery games, including the implementation of games utilizing a variety of existing or future technological advances at the earliest feasible date. The commission may operate lottery games utilizing electronic computers and electronic computer terminal devices and systems, which systems must include a central site system of monitoring the lottery terminals utilizing direct communication systems, or other technological advances and procedures, ensuring honesty and integrity in the operation of the lottery.

CHAPTER 113

(Com. Sub. for S. B. 103 - By Senator Trump)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §29-21-6 and §29-21-13a of the Code of West Virginia, 1931, as amended, all relating generally to Public Defender Services; requiring Public Defender Services to establish and operate a division within the agency for the purpose of prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals upon appointment by a court; transferring initial authority to review, approve, modify, or refuse panel attorney vouchers from circuit courts to Public Defender Services; providing for resubmission or reconsideration of vouchers previously modified or refused; establishing procedures for handling of modified or refused vouchers; maintaining final authority over payment of vouchers with circuit courts; authorizing the
Executive Director of Public Defender Services, with approval of the Indigent Defense Commission, to contract for noncriminal legal services; providing for payment of contracts; authorizing agency to reduce or reject vouchers or requests for payment; requiring panel attorneys to maintain time-keeping records to enable the attorney to determine time expended on a daily basis; setting record-keeping standards; requiring prompt processing and payment of vouchers; increasing the rates of compensation for panel attorneys; authorizing payment for in-court paralegal services with prior approval of the circuit court and subject to agency rule regarding maximum reimbursement; authorizing the executive director to promulgate emergency rules; and setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PUBLIC DEFENDER SERVICES.


(a) Consistent with the provisions of this article, the agency is authorized to make grants to and contracts with public defender corporations and with individuals, partnerships, firms, corporations, and nonprofit organizations for the purpose of providing legal representation under this article and may make any other grants and contracts that are necessary to carry out the purposes and provisions of this article.

(b) The agency is authorized to accept and employ or dispose of in furtherance of the purposes of this article any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise.

(c) The agency shall establish and the executive director or his or her designee shall operate a criminal law research center as provided in §29-21-7 of this code. This center shall undertake directly, or by grant or contract, to serve as a clearinghouse for information; to provide training and technical assistance related to the delivery of legal
representation; and to engage in research, except that broad
general, legal, or policy research unrelated to direct
representation of eligible clients may not be undertaken.

(d) The agency shall establish and the executive director
or his or her designee shall operate an accounting and
auditing division to require and monitor the compliance
with this article by public defender corporations and other
persons or entities receiving funding or compensation from
the agency. The accounting and auditing division shall
review all plans and proposals for grants and contracts and
shall make a recommendation of approval or disapproval to
the executive director. The accounting and auditing division
shall prepare, or cause to be prepared, reports concerning
the evaluation, inspection, or monitoring of public defender
corporations and other grantees, contractors, persons, or
entities receiving financial assistance under this article and
shall further carry out the agency’s responsibilities for
records and reports as set forth in §29-21-18 of this code.
The accounting and auditing division shall require each
public defender corporation to submit financial statements
monthly and to report monthly on the billable and
nonbillable time of its professional employees, including
time used in administration of the respective offices, so as
to compare the time to similar time expended in nonpublic
law offices for similar activities. The accounting and
auditing division shall provide to the executive director
assistance in the fiscal administration of all of the agency’s
divisions. This assistance shall include, but not be limited
to, budget preparation and statistical analysis.

(e) The agency shall establish and the executive director
or his or her designee shall operate an appellate advocacy
division for the purpose of prosecuting litigation on behalf
of eligible clients in the Supreme Court of Appeals. The
executive director or his or her designee shall be the director
of the appellate advocacy division. The appellate advocacy
division shall represent eligible clients upon appointment by
the circuit courts or by the Supreme Court of Appeals. The
division may, however, refuse the appointments due to a conflict of interest or if the executive director has determined the existing caseload cannot be increased without jeopardizing the appellate division’s ability to provide effective representation. In order to effectively and efficiently use the resources of the appellate division, the executive director may restrict the provision of appellate representation to certain types of cases. The executive director may select and employ staff attorneys to perform the duties prescribed by this subsection. The appellate division shall maintain records of representation of eligible clients for record purposes only.

(f) The agency shall establish and the executive director or his or her designee shall operate a division within the agency for the purpose of prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals. The executive director or his or her designee shall be the director of the division. The division shall represent eligible clients upon appointment by a circuit court or the Supreme Court of Appeals. A court may appoint the division to represent an eligible person unless the appointment would create a conflict of interest or the executive director has notified the court in writing that the division’s existing caseload cannot be increased for a specified period of time without jeopardizing its ability to provide effective representation. In appointing the division, a court should determine whether the appointment of the division is the most effective use of the office considering the grounds and legal issues raised by the petitioner. The executive director may select and employ staff attorneys, paraprofessionals, and investigators to perform the duties prescribed by this subsection. The division shall maintain records of representation of eligible clients for record-keeping purposes only.

(g) If the executive director, with the approval of the Indigent Defense Commission and the Secretary of Administration, determines that the purposes of this article
can be furthered and costs reduced by the execution of a contract with a provider of legal services in specialized areas of the law, other than criminal defense or the representation of respondent parents in abuse and neglect proceedings, to provide legal representation to eligible clients, the execution of the contract is authorized and is exempt from the provisions of, and procedures adopted pursuant to, §5A-3-1 et seq. of this code. The payment of the contract amount is authorized from the funds appropriated for the payment of appointed counsel fees.

(h) The agency may reduce or reject vouchers or requests for payment submitted pursuant to §29-21-13a of this code found not to be in compliance with the provisions of this article, subject to the limitations set forth herein.

(i) The executive director may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the provisions of this article as amended during the 2019 regular session of the Legislature.

§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and which records are to be maintained in a form that will enable the attorney to determine for any day the periods of time expended in tenths of an hour on behalf of any eligible client and the total time expended in tenths of an hour on that day on behalf of all eligible clients: Provided, That in no event may panel attorneys be required to maintain or submit the actual start and finish times of work performed.

(b) Upon completion of each case, exclusive of appeal, panel attorneys shall submit to Public Defender Services a voucher for services. Public Defender Services shall electronically acknowledge the submission of a voucher. Claims for fees and expense reimbursements shall be submitted to Public Defender Services on forms approved.
by the executive director. The executive director shall establish guidelines for the submission of vouchers and claims for fees and expense reimbursements under this section. Claims submitted more than 90 business days after the last date of service shall be rejected unless, for good cause, the appointing court authorizes in writing an extension.

(c) Public Defender Services shall review the voucher to determine if the time and expense claims are reasonable, necessary, and valid. A voucher found to be correct shall be processed and payment promptly directed within 45 business days of submission of the voucher.

(d)(1) If Public Defender Services rejects a voucher, the attorney submitting the voucher shall be notified electronically of the rejection and provided detailed reasons for the rejection within 30 business days of submission of the voucher. The attorney may resubmit the voucher accompanied by copies of his or her records supporting the voucher and certification from the appointing court that the services or expenses were performed or incurred, and were reasonable and necessary, within 15 business days of receipt of notification. The executive director shall make a final agency decision regarding the rejection of the voucher within 15 business days of receipt of the submitted records and certification. Under no circumstances may the executive director have the authority or require any panel attorney to submit privileged client information.

(2) If the final agency decision is to reject the voucher, Public Defender Services shall request review of the final agency decision by motion to the appointing court filed within 15 business days of notice of the final agency decision. After a hearing providing the attorney and Public Defender Services an opportunity to be heard, the appointing court shall have final authority to resolve the issue of payment and to order all remedies available under the West Virginia Rules of Civil Procedure.
(e) If Public Defender Services reduces the amount of compensation claimed or reimbursement requested, the attorney submitting the voucher shall be notified electronically of the reduction and detailed reasons for the reduction within 30 business days of the submission of the voucher. The attorney may:

(1) Agree with the reduction and certify his or her agreement electronically to Public Defender Services which shall then proceed to process payment; or

(2) Disagree with the reduction and request payment of the reduced amount while preserving the ability to contest the reduction;

(3) An attorney proceeding pursuant to this subsection shall inform Public Defender Services of his or her decision by electronic means within 15 business days of receipt of the notice of reduction. If there is no communication from the attorney within 15 business days of receipt of the notice of reduction, then the reduction is deemed to be accepted by the attorney;

(4) The attorney may submit records and certification from the appointing court that the services or expenses reflected in the amount reduced were performed or incurred and were reasonable and necessary. The executive director shall then make a final agency decision regarding the reduction within 15 business days of receipt of the submitted records and certification. Under no circumstances may the executive director have the authority to require any panel attorney to submit privileged client information;

(5) If the attorney disagrees with the final agency decision, and the attorney and the executive director cannot reach an agreement regarding the reduction within 15 business days of the receipt of the notice of the final agency decision, Public Defender Services shall request review of the final agency decision by motion to the appointing court filed within 15 business days of notice of the final agency decision.
decision. After a hearing providing the attorney and Public Defender Services an opportunity to be heard, the appointing court shall have final authority to resolve the issue of payment, and to order all remedies available under the West Virginia Rules of Civil Procedure;

(6) If there is no communication from Public Defender Services within 30 business days of the submission of the voucher, the voucher is deemed to have been approved for payment without reduction.

(f) Notwithstanding any provisions of this code to the contrary, the executive director may employ in-house counsel to represent Public Defender Services in hearings held pursuant to this article.

(g) Except for the emergency rule-making provision set forth in §29-21-6(h) of this code, the provisions of the amendments to this article enacted during the 2019 regular session of the Legislature shall be effective July 1, 2019.

(h) Notwithstanding any other provision of this section to the contrary, Public Defender Services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.

(i) Notwithstanding any other provision of this section to the contrary, a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where: (1) More than six months have expired since the commencement of the panel attorney’s representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by Public Defender Services during the case. The executive director, in his or her discretion, may authorize periodic payments where ongoing representation extends beyond six months in duration. The amounts of any fees or expenses paid to the panel attorney on an interim basis, when combined with any amounts paid to the panel attorney
at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(j) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred subsequent to the effective date of this article:

(1) For attorney’s work performed out of court, compensation shall be at the rate of $60 per hour.

Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses, preparation of pleadings, and prehearing or pretrial research;

(2) For attorney’s work performed in court, compensation shall be at the rate of $80 per hour.

In-court work includes, but is not limited to, all time spent awaiting hearing or trial before a judge, magistrate, special master, or other judicial officer;

(3) Compensation for legal services performed for a panel attorney by a paralegal out-of-court is to be calculated using a rate of $20 per hour and no such compensation is to be paid for in-court services performed for a panel attorney by a paralegal absent prior approval of the circuit court before whom the panel attorney is appearing and subject to maximum reimbursement amounts set by agency rule;

(4) The maximum amount of compensation for out-of-court and in-court work under this subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, the amount as the court may approve; for all other eligible proceedings, $3,000 unless the court, for good cause shown, approves payment of a larger sum.
(k) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses, shall be reimbursed in an amount as the court may approve. For all other eligible proceedings, actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed to a maximum of $1,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

(l) Expense vouchers shall specifically set forth the nature, amount, and purpose of expenses incurred and shall provide receipts, invoices, or other documentation required by the executive director and the State Auditor as follows:

(1) Reimbursement of expenses for production of transcripts of proceedings reported by a court reporter is limited to the cost per original page and per copy page as set forth in §51-7-4 of this code;

(2) There may be no reimbursement of expenses for or production of a transcript of a preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where the hearing or trial has also been recorded electronically in accordance with the provisions of §50-5-8 of this code or court rule;

(3) Reimbursement of the expense of an appearance fee for a court reporter who reports a proceeding other than one described in subdivision (2) of this subsection is limited to $25. Where a transcript of a proceeding is produced, there may be no reimbursement for the expense of any appearance fee;

(4) Except for the appearance fees provided in this subsection, there may be no reimbursement for hourly court
189 reporters’ fees or fees for other time expended by the court reporter, either at the proceeding or traveling to or from the proceeding;

192 (5) Reimbursement of the cost of transcription of tapes electronically recorded during preliminary hearings or magistrate court trials is limited to $1 per page;

195 (6) Reimbursement for any travel expense incurred in an eligible proceeding is limited to the rates for the reimbursement of travel expenses established by rules promulgated by the Governor pursuant to the provisions of §12-8-11 of this code and administered by the Secretary of the Department of Administration pursuant to the provisions of §5A-3-48 of this code;

202 (7) Reimbursement for investigative services is limited to a rate of $30 per hour for work performed by an investigator.

205 (m) For purposes of compensation under this section, an appeal from magistrate court to circuit court, an appeal from a final order of the circuit court, or a proceeding seeking an extraordinary remedy made to the Supreme Court of Appeals shall be considered a separate case.

210 (n) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered, and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client for which services were rendered is one of several charges involving multiple warrants or indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to enable Public Defender Services to avoid a duplication of compensation for services rendered. The executive director shall refuse to requisition payment for any voucher which is not in conformity with the recordkeeping, compensation, or
other provisions of this article or the voucher guidelines established issued pursuant to this article and in such circumstance shall return the voucher to the court or to the service provider for further review or correction.

(o) Vouchers submitted under this section shall be reimbursed within 90 days of receipt. Reimbursements after 90 days shall bear interest from the 91st day at the legal rate in effect for the calendar year in which payment is due.

(p) Vouchers submitted for fees and expenses involving child abuse and neglect cases shall be processed for payment before processing vouchers submitted for all other cases.

CHAPTER 114

(S. B. 272 - By Senators Carmichael (Mr. President), Trump, Woelfel, Palumbo and Tarr)

[Amended and Again Passed February 21, 2019; as a result of the objections of the Governor; in effect from passage.]
[Approved by the Governor on February 28, 2019.]

AN ACT to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4, and §4-5-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §4-5-7 and §4-5-8, all relating to the Commission on Special Investigations; continuing the commission; clarifying composition and chairmanship of the commission and terms of members; redefining what constitutes a quorum for voting procedures of the commission; specifying contents of the commission’s annual report; authorizing the employment of staff and the creation of certain staff positions; granting power to conduct interviews and request production from agencies of the state and its political subdivisions of books,
records, documents, papers, and tangible things, but exempting items deemed confidential under state or federal law; authorizing the issuance of written requests for production in lieu of subpoenas; authorizing the director to issue subpoenas on the commission’s behalf; authorizing the commission to require an agency head to appear before the commission to answer for an agency’s failure to appear or produce requested or subpoenaed material or other failure to comply with a commission investigation; providing for executive session and confidentiality rights of witnesses; updating exemption of investigative materials from public disclosure; removing requirement for pre-approval of expenses of the commission by the Joint Committee on Government and Finance; requiring that protected information provided to the commission be kept confidential, private, and secure in the same manner required of the government entity from which the information was received; providing procedures and requirements for the commission’s retention and disposal of records; establishing new offenses of impersonating a commission member or staff member and of threatening or otherwise obstructing a commission member or staff; establishing criminal penalties; allowing the commission to award duty weapons to certain members on retirement; exempting the commission from the jurisdiction of the Agency for Surplus Property within the Purchasing Division of the Department of Administration with respect to the disposal of the commission’s primary and secondary duty weapons; authorizing sale of surplus weapons to active and retired members of the commission’s investigative staff; and updating language and terms for clarity throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission on Special Investigations continued; composition; appointment and terms of members.

The Commission on Special Investigations is continued. The commission shall continue to be composed of the President of the Senate and four members of the Senate, to be
appointed by the President of the Senate, no more than two of whom shall be from the same political party; and the Speaker of the House of Delegates and four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates, no more than two of whom shall be appointed from the same political party: Provided, That in the event the membership of a political party is less than 15 percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than 15 percent membership may be one from that house. The commission shall be chaired by the President of the Senate and the Speaker of the House of Delegates. All members appointed to the commission by the commission chairs serve until their successors are appointed as provided in this section.

§4-5-2. Powers and duties generally.

(a) The Commission on Special Investigations may, by majority vote:

(1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;

(2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;

(3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

(4) Investigate or examine any matter involving conflicts of interest, bribery of state officials, malfeasance, misfeasance, or nonfeasance in office by any employee or officer of the state;

(5) Conduct comprehensive and detailed investigations to determine if any criminal or civil statutes have been violated at any level of state government;
(6) Determine whether to recommend criminal prosecution or civil action for any violation, either criminal or civil, at any level of state government and, if it is determined that action is necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney, or other authority empowered to act on the recommendation; and

(7) Make written reports deemed advisable by the commission to the members of the Legislature between its sessions. On the first day of each regular session of the Legislature, the commission shall make an annual report on its activities to the Legislature containing recommendations for any proposed legislation which it considers necessary to carry the recommendations into effect.

(b) The commission may also:

(1) Sit during any recess of the Senate and House of Delegates;

(2) Recommend to the judge of any circuit court that a grand jury be convened pursuant to the provisions of §52-2-14 of this code to consider any matter which the commission considers in the public interest and, in support thereof, make available to the court and the grand jury the contents of any reports, files, transcripts of hearings, or other evidence pertinent to the matter;

(3) Employ necessary legal, technical, investigative, clerical, stenographic, advisory, and other personnel and, within the appropriation specified in §4-5-4 of this code, fix reasonable compensation of any persons and firms that are employed. The commission’s investigative staff may consist of a director, deputy director, senior investigators, and investigators as approved by the cochairs: Provided, That the commission may authorize certain employees of the commission to administer oaths and take affidavits and depositions anywhere in the state;

(4) Consult and confer with all public and private persons and organizations, any entity of federal or state
government or of any political subdivision of the state, that
have information and data pertinent to an investigation; and
all state agencies and state political subdivisions shall
cooperate to the fullest extent with the commission;

(5) Call upon any entity of state government or of any
political subdivision of the state for any services,
information, and assistance the commission considers
advisable;

(6) Refer appropriate matters to the office of the United
States Attorney, or other appropriate state or federal law-
enforcement entity, and cooperate with such office in the
disposition of matters so referred; and

(7) Interview witnesses and require production from any
entity of state government, or of any political subdivision of
the state, of books, records, documents, papers, computers,
laptops, computer hard drives, electronic records including,
but not limited to, emails, electronic files, electronic
documents and metadata, or any other thing, in any form in
which it may exist, as the commission believes should be
examined to make a complete investigation, except where
the records, documents, data, or items are protected from
disclosure by state or federal law or privilege recognized by
state or federal courts: Provided, That a request for
production pursuant to this subdivision may be in the form
of a written letter from the director of the commission in lieu
of a subpoena.

(c) Notwithstanding any provision of this code to the
contrary, specific personnel may be designated by the
commission to carry a firearm in the course of performing his
or her official duties: Provided, That as a precondition of being
authorized to carry a concealed weapon in the course of their
official duties, any such designated personnel shall first
successfully complete a firearms training and certification
program which is equivalent to that which is required of
members of the State Police. A person so designated shall also
possess a license to carry a concealed deadly weapon in the
manner prescribed in §61-7-1 et seq. of this code.
§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

The commission may conduct proceedings in a confidential executive session for the purpose of establishing business, establishing policy, reviewing investigations, and interrogating a witness or witnesses: Provided, That if a witness desires a public or open hearing the witness may demand an open hearing and shall not be heard otherwise: Provided, however, That if a witness desires a hearing in an executive session, the witness may so request and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions.

All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission or its staff may administer oaths or affirmations to such witnesses. To compel witnesses to attend a hearing or produce any books, records, documents, or papers, or any other tangible thing except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts, the commission may issue subpoenas, signed by one of the cochairs: Provided, That the commission may specifically authorize or delegate the power to its director to sign subpoenas on its behalf. The subpoenas shall be served by any person authorized by law to serve and execute legal process, and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance: Provided, That prior
to seeking circuit court relief, the commission may, in its discretion, first demand the head of the public agency in which an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the commission and address the basis for the failure to comply and whether compliance will be forthcoming.

§4-5-4. Compensation and expenses of members; other expenses; how paid.

The members of the commission shall receive travel, interim, and out-of-state expenses, as authorized in §4-2A-6 and §4-2A-8 of this code. Such expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory, and other personnel, shall be paid from the appropriation for Joint Expenses.

§4-5-5. Investigations exempt from public disclosure requirements.

(a) The investigations conducted by the commission and the materials, in any medium, including hard copy and electronic, placed in the custody of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter 29B of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commission may dispose of printed materials placed in its files upon a vote of the commission: Provided, That the commission shall save copies of materials filed on or after January 1, 2010, in electronic form prior to their disposal.

(c) When the commission receives information, in any form, from any office, agency, department, or branch of state or local government that is bound by state or federal law to maintain the confidentiality, privacy, or security of the information, that governmental body shall identify to the commission what information and materials are so protected and identify the law or laws governing the confidentiality, privacy, or security of the information. The commission
shall protect the confidentiality, privacy, or security of the protected information in like manner and to the same level as is required of the governmental body providing the information to the commission. When the commission has completed an investigation and no longer has a need to maintain the confidential or protected information or materials, the commission shall notify the entity from whom the information was received and, unless requested to return the information or materials, shall destroy the same in a secure fashion and notify the entity from whom the information was received of this destruction.

§4-5-7. Impersonation or obstruction of commission member or staff.

(a) A person is guilty of impersonating a member or employee of the Commission on Special Investigations when he or she does one of the following:

(1) Falsely represents himself or herself to be a member or employee of the commission;

(2) Falsely represents himself or herself to be acting under the order or direction, or to have the authority, of the commission or its staff; or

(3) Falsely presents a badge, credentials, other insignia or likeness thereof, used by the commission for identification as a member of the commission or its staff.

(b) Any person who, by threats, menaces, or acts, or who forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a Commission on Special Investigations member or employee acting in his or her official capacity, is guilty of obstruction: Provided, That failure to produce information or records at the request of a member or employee of the commission is not obstruction when such disclosure is prohibited by state or federal law.

(c) Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction thereof, shall be fined not less than $500 nor more than
§4-5-8. Award of duty weapon upon retirement; disposal of other weapons used by staff.

(a) Upon the retirement of a member of the commission’s investigative staff, the cochairs of the commission shall award to the retiring employee a duty weapon used by the employee when that employee retires honorably after having served:

(1) At least 20 years of actual service on the commission’s investigative staff;

(2) At least 20 years in law enforcement and an additional 10 years of service on the commission’s investigative staff; or

(3) Any period of service on the commission’s investigative staff and retires due to total physical disability resulting from his or her service to the commission.

(b) The award of the duty weapon shall be without charge to the employee or other condition: Provided, That the cochairs shall not award a duty weapon to any retiring employee whom the cochairs find to be mentally incapacitated or to be a danger to any person or to the community.

(c) The commission has the sole authority to determine the manner of disposition of duty weapons of members of the commission’s investigative staff when replaced due to age or routine wear. The commission may offer these surplus weapons for sale at fair market value to any active or retired member of the commission’s investigative staff who has been designated to carry a firearm in the course of duties with the commission, with the proceeds of any sales to be used to offset the cost of new weapons. Surplus duty weapons may also be included as trade-ins toward the purchase of new weapons.
AN ACT to amend and reenact §5F-1-5 of the Code of West Virginia, 1931, as amended, relating to certain contact information being listed on the online state phone directory; clarifying the listing requirements to include employee job title and agency-provided mobile phone number; providing an exemption for listing mobile phone information; and requiring the information to be posted on the agency website.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-5. Online state phone directory.

(a) Each agency listed in the online state phone directory shall update the employee information in the directory, as required by this section, or provide the Office of Technology the following information, unless it is determined by the submitting agency that publishing such information could cause safety concerns to the employee, reveal sensitive information that should not be provided to the public at large, or is detrimental to the service operations of the agency:

1. Employee name and job title;
2. Office location and mailing address, including name of city and zip code;
3. Office telephone number, including extension;
4. Electronic mail address; and
(5) Mobile telephone number, if used as referred to in §5F-1-5(e) of this code.

(b) The agency shall provide the Office of Technology written justification if the agency does not wish to provide the required information pursuant to §5F-1-5(a) of this code.

(c) Each agency listed in the online state phone directory shall update the online state phone directory information within 30 days after personnel action or event that would require the agency to add, modify, or delete information from the directory, or the agency shall provide that information to the Office of Technology.

(d) The Office of Technology shall, within 30 days of receipt of updated employee information from an agency, make the requested changes to the online state phone directory.

(e) Beginning with the effective date of this amendment, each agency listed in the online state phone directory shall update the employee information in the directory to include the information required in §5F-1-5(a) of this code for any official or employee who either has a mobile telephone furnished by his or her employer, or uses his or her private mobile telephone during his or her employment with the state and the service is paid by the employer: Provided, That this information shall also be listed on the website of each agency.

CHAPTER 116

(Com. Sub. for S. B. 408 - By Senators Palumbo and Woelfel)

[Passed March 4, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §29-21-16 of the Code of West Virginia, 1931, as amended, relating to public defender services
generally; clarifying the person to determine financial eligibility for public defender services; empowering court administrators in circuits which have one to make the eligibility determination; continuing the authority of public defender offices to make eligibility decisions in circuits with a public defender office but without a court administrator; and authorizing circuit courts to make eligibility decisions in circuits with neither a court administrator nor a public defender office.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The agency shall establish and periodically review and update financial guidelines for determining eligibility for legal representation made available under the provisions of this article. The agency shall adopt a financial affidavit form for use by persons seeking legal representation made available under the provisions of this article.

(b) All persons seeking legal representation made available under the provisions of this article shall complete the agency’s financial affidavit form, which shall be considered as an application for the provision of publicly funded legal representation.

(c) Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of §49-4-701 through §49-4-725 of this code. If the juvenile advises the court of his or her inability to pay for counsel, the court shall require the juvenile’s parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the juvenile’s parents, or, if applicable, the juvenile’s custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the juvenile. If the financial affidavit demonstrates that either of the juvenile’s parents, or, if applicable, the juvenile’s custodian, does have sufficient
assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the juvenile in the proceedings.

The court may disregard the assets of the juvenile’s parents or custodian and appoint counsel for the juvenile, as provided in this section, if the court concludes, as a matter of law, that the juvenile and the parent or custodian have a conflict of interest that would adversely affect the juvenile’s right to effective representation of counsel, or concludes, as a matter of law, that requiring the juvenile’s parent or custodian to provide legal representation for the juvenile would otherwise jeopardize the best interests of the juvenile.

(d) In any circuit in which there exists a trial court administrator, the office of the administrator shall make determinations of indigency. In circuits in which a public defender office is in operation and a trial court administrator does not exist, all determinations of indigency shall be made by a public defender office employee designated by the executive director. In circuits in which no trial court administrator or public defender office is in operation, circuit judges shall make all determinations of eligibility. The determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions (1) through (9), subsection (e) of this section. If there is substantial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make any inquiries necessary to determine whether the affiant has truthfully and completely disclosed the required financial information.

After reviewing all pertinent matters, the person determining eligibility may find the affiant eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation
shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person’s particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the nine factors set forth in subsection (e) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (e) of this section.

(e) The following factors shall be considered in determining eligibility for legal representation made available under the provisions of this article:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds to employ private counsel, and other assets which may be liquidated to provide funds to employ private counsel;

(3) Fixed debts and obligations, including federal, state, and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;
(6) Whether the person seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

(7) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(8) Whether the person seeking publicly funded legal representation has posted a cash bond for bail or has obtained release on bond for bail through the services of a professional bondsman for compensation and the amount and source of the money provided for the bond;

(9) The consequences for the individual if legal assistance is denied.

(f) Legal representation requested by the affiant may not be denied, in whole or part, unless the affiant can obtain legal representation without undue financial hardship. A person determined to be ineligible by public defender personnel may have the initial determination reviewed by a local circuit judge who may amend, modify, or rewrite the initial determination. At any stage of the proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become incorrect as the result of the affiant’s changed financial circumstances, and may revoke any prior order providing legal representation. In that event, any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to the appointment for services already rendered.

(g) In the circumstances and manner set forth below, circuit judges may order repayment to the state, through the office of the clerk of the circuit court having jurisdiction over the proceedings, of the costs of representation provided under this article:

(1) In every case in which services are provided to an indigent person and an adverse judgment has been rendered against such person, the court may require that person, and
in juvenile cases, may require the juvenile’s parents or
custodian, to pay as costs the compensation of appointed
counsel, the expenses of the defense, and any other fees and
costs authorized by statute;

(2) The court shall not order a person to pay costs unless
the person is able to pay without undue hardship. In
determining the amount and method of repayment of costs,
the court shall take account of the financial resources of the
person, the person’s ability to pay, and the nature of the
burden that payment of costs will impose. The fact that the
court initially determines, at the time of a case’s conclusion,
that it is not proper to order the repayment of costs does not
preclude the court from subsequently ordering repayment if
the person’s financial circumstances change;

(3) When a person is ordered to repay costs, the court
may order payment to be made immediately or within a
specified period of time or in specified installments. If a
person is sentenced to a term of imprisonment, an order for
repayment of costs is not enforceable during the period of
imprisonment unless the court expressly finds, at the time
of sentencing, that the person has sufficient assets to pay the
amounts ordered to be paid or finds there is a reasonable
likelihood the person will acquire the necessary assets in the
foreseeable future;

(4) A person who has been ordered to repay costs, and
who is not in contumacious default in the payment thereof,
may at any time petition the sentencing court for
modification of the repayment order. If it appears to the
satisfaction of the court that continued payment of the
amount ordered will impose undue hardship on the person
or the person’s dependents, the court may modify the
method or amount of payment;

(5) When a person ordered to pay costs is also placed on
probation or imposition or execution of sentence is
suspended, the court may make the repayment of costs a
condition of probation or suspension of sentence.
(h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the State Auditor who shall deposit the funds in the General Revenue Fund of the state.

(i) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this article. A person who has made an affidavit knowing the contents of the affidavit to be false may be prosecuted for false swearing as provided by law.

CHAPTER 117

(S. B. 461 - By Senator Blair)

[Passed March 8, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §11-21-77 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22-15a of said code, all relating generally to lottery prizes; defining terms; extending personal income tax withholding requirements to certain lottery winnings; designating lottery winnings as source income; specifying gross prize threshold for lottery winner anonymity election; specifying exemption from Freedom of Information Act; specifying treatment of lottery pool members; eliminating fee for anonymity option election; specifying limitations and exceptions to anonymity pursuant to lawful legal process, disclosure to local, state, or federal tax agencies, and agencies lawfully entitled to information; authorizing promulgation of rules; specifying
method for determining value of gross prize; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-77. Extension of withholding to certain lottery winnings; lottery winnings source income.

(a) Lottery winnings subject to withholding. — Gross prizes, as defined in §29-22-15a of this code, of more than $5,000 from any lottery prize awarded by the West Virginia State Lottery Commission are subject to withholding under §11-21-1 et seq. of this code. The West Virginia State Lottery Commission in making any lump sum payment, annuity payment or installment payment of a lottery prize subject to withholding shall deduct and withhold from the payment a tax in an amount equal to six and one-half percent of the payment.

(b) Statement by recipient. — Every person who is to receive payment of a lottery prize subject to withholding shall furnish to the person making the payment, a statement made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and each person entitled to any portion of the payment.

(c) Coordination with other sections. — For the purposes of determining liability for payment of taxes and filing of returns, payments of a lottery prize subject to withholding shall be treated as if they were wages paid by an employer to an employee, but shall not be treated as compensation for personal services performed within this state for purposes of §11-21-40 and §11-21-41 of this code.

(d) Source Income. — (1) All lottery prizes awarded by the West Virginia State Lottery Commission shall be
taxed as West Virginia source income and shall be subject to all state and federal income tax laws and rules and regulations. Pursuant to this section, state income taxes shall be withheld from prizes paid whenever federal income taxes are required to be withheld under the Internal Revenue Code.

(2) All prizes awarded by the West Virginia State Lottery Commission shall be taxed as West Virginia source income and taxable to nonresidents in accordance with §11-21-32 and §11-21-44 of this code and shall be subject to withholding in accordance with this section.

(3) The sourcing provisions of this section shall apply to all prizes awarded by the West Virginia State Lottery Commission, without regard to the form of payment or the period of time over which payments are made. Lump sum payments, installment payments, annuity payments, and winnings payments that are sold, assigned, transferred, or otherwise split, shared, or conveyed to or among parties other than the original prize winner retain their identity as prizes awarded by the West Virginia State Lottery Commission, and retain their character as West Virginia source income.

(e) Backup withholding. — Beginning July 1, 2012, every person who is required to file Internal Revenue Service Form W-2G, and who is subject to backup withholding under federal law, is subject to West Virginia backup withholding. The payor in making any payment of a gambling prize subject to backup withholding shall deduct and withhold from the payment a tax in an amount equal to six and one half percent of the payment.

(f) The changes made to this section during the 2019 regular session of the Legislature shall take effect immediately upon the effective date of this section.
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-15a. Option for winners of draw games to remain anonymous.

(a) A person entitled to collect a gross prize equal to or exceeding $1 million from a winning West Virginia State Lottery draw game ticket may remain anonymous: Provided, That such anonymity only applies to disclosure by the West Virginia State Lottery, and its employees and officers, of the name, personal contact information, and likeness of the person so entitled: Provided, however, That this provision shall not be construed to prevent or impede the lawful disclosure of such information in any court of record or administrative forum pursuant to lawful legal process or disclosure of such information to any taxing agency of any local, state, or federal government or any local, state, or federal agency lawfully entitled to such information, including agencies of another state and lottery agencies of states participating in a multistate or multijurisdictional lottery: Provided further, That the name, personal contact information, and likeness of the person so entitled shall not be subject to disclosure under the Freedom of Information Act set forth in §29B-1-1 et seq. of this code.

(b) If the person entitled to collect a gross prize equal to or exceeding $1 million from a winning draw game ticket desires to remain anonymous, he or she shall contact the State Lottery Director in writing or appear at the state lottery headquarters in person, concerning his or her desire to remain anonymous: Provided, That such a request only permits the person’s name, personal contact information, and likeness to remain anonymous. The State Lottery Director may provide by legislative, procedural, or interpretive rule such administrative and timeliness requirements for submission of a request for anonymity as
may be necessary or convenient, promulgation of which is hereby authorized.

(1) At the time of his or her request to remain anonymous, the person shall provide his or her contact information, including any personal telephone number, residential address, electronic mail address, and a properly executed Internal Revenue Service Form W-2G.

(2) When a group forms a lottery pool to purchase lottery tickets and the lottery pool wins the prize, only those members of the lottery pool that each, individually, win a gross prize equal to or exceeding $1 million, or who, as a result of their lottery pool membership, are entitled to a share of a gross prize equal to or exceeding $1 million or more, may elect to remain anonymous.

(c) Any request to remain anonymous may be made in writing, by certified mail addressed to the West Virginia State Lottery Director, P.O. Box 2067, Charleston, West Virginia 25327, by electronic mail to an email address that is to be established by the West Virginia State Lottery prior to the effective date of this section, or in person at the state lottery headquarters. Once established, the secure email address shall be posted on the West Virginia Lottery’s website prior to the effective date of this section: Provided, That notwithstanding other provisions of this subsection, the West Virginia State Lottery Director may prescribe by emergency, legislative, procedural, or interpretive rule such transmittal, documentation, timing, and administrative requirements as may be necessary or convenient for submission and processing of requests for anonymity, and such rule requirements and conditions may differ from, and shall supersede, those set forth in this subsection.

(d) Upon receiving a request to remain anonymous, the director shall contact the person requesting anonymity and schedule an appointment to meet at any county, regional, or state lottery office to confirm the winning number and to
otherwise make arrangements to protect the anonymity of the requesting person.

(e) The requirements of this section enacted in 2018 are effective on January 1, 2019. The amendments to this section enacted in 2019 shall take effect upon passage and apply to prizes awarded on and after that date.

(f) Definitions. — For purposes of this section:

(1) Annuity. — The term “annuity” means periodic payments of a lottery prize which are payable over a period greater than one year and which are treated under Section 72 of the Internal Revenue Code, as defined in §11-21-9 of this code, as amounts received as an annuity, whether or not the periodic payments are variable in amount.

(A) A gross prize paid or payable as an annuity or a stream of installment payments shall be valued as the total aggregate amount of annuity payments or installment payments to be received over the life of the annuity or stream of installment payments, without discount for present value or the time value of money or payments.
(B) In the case of annuities or a stream of installment payments payable for a fixed period of time, the annuity or a stream of installment payments shall, for the limited purpose of determining the $1 million threshold amount specified in subsection (a) of this section, be valued over such fixed period.

(C) In the case of annuities or a stream of installment payments payable for life or for an indefinite period of time of 30 years or more, the annuity or stream of installment payments shall, for the limited purpose of determining the $1 million threshold amount specified in §29-22-15a(a) of this code, be valued as if it were paid over a fixed period of 30 years.

(D) In the case of annuities or a stream of installment payments payable for an indefinite but limited period of time of less than 30 years, the annuity or stream of installment payments shall, for the limited purpose of determining the $1 million threshold amount specified in §29-22-15a(a) of this code, be valued as if it were paid over a fixed period equal to the maximum period of years, or period of time over which it may be paid.

(E) In the case of an annuity or a stream of installment payments, payments of which are to be adjusted by an inflation factor or other factor over time, the annuity or stream of installment payments shall, for the limited purpose of determining the $1 million threshold amount specified in §29-22-15a(a) of this code, be valued at the aggregate amount of payments to be received over the life of the annuity or stream of installment payments as if all payments are equal to the first payment, without adjustment for inflation or other factors.

(3) **Lottery pool.** — The term “lottery pool” means a group of lottery players who pool their money to buy lottery tickets, and who purchase tickets for a single drawing.
AN ACT to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended, relating to the Judicial Vacancy Advisory Commission; altering the residency requirements for members of the commission; providing that no more than two of the commission’s appointed members may be residents of the same state senatorial district; providing that if the number of congressional districts in the state is reduced to two, no more than four of the commission’s appointed members may be residents of the same congressional district; providing that members appointed to, and serving on, the commission prior to the effective date of the new residency requirements will not be disqualified from serving for the remainder of their terms; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-3a. Judicial Vacancy Advisory Commission.

(a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy, or the formal announcement of the justice or judge by letter to the Governor of an upcoming resignation or retirement that will result in the occurrence of a vacancy, in the office of Justice of the Supreme Court of Appeals, judge of a circuit
court, or judge of a family court. The Governor shall make
the appointment to fill the vacancy, as required by this
article, within 30 days following the receipt of the list of
qualified candidates or within 30 days following the
vacancy, whichever occurs later.

(b) The commission shall consist of eight appointed
members appointed by the Governor for six-year terms,
including four public members and four attorney members.
The Governor shall appoint attorney members from a list of
nominees provided by the Board of Governors of the West
Virginia State Bar. The Board of Governors of the West
Virginia State Bar shall nominate no more than 20 nor less
than 10 of the most qualified attorneys for appointment to
the commission whenever there is a vacancy in the
membership of the commission reserved for attorney
members. The commission shall choose one of its appointed
members to serve as chair for a three-year term. No more
than four appointed members of the commission shall
belong to the same political party. All members of the
commission shall be citizens of this state. Public members
of the commission may not be licensed to practice law in
West Virginia or any other jurisdiction.

(c) (1) No more than two appointed members of the
commission may be residents of the same state senatorial
district, as provided in §1-2-1 of this code, at the time of
appointment: Provided, That the members appointed to, and
serving on, the commission prior to the enactment of this
subdivision are not disqualified from service for the
remainder of the member’s term based on the residency
requirements of this subdivision.

(2) No more than three appointed members of the
commission may be residents of the same congressional
district: Provided, That, if the number of congressional
districts in the state is reduced to two, then no more than
four appointed members of the commission may be
residents of the same congressional district: Provided,
however, That the members appointed to, and serving on,
the commission prior to the date on which the number of congressional districts in the state is reduced to two are not disqualified from service for the remainder of the member’s term based on the residency requirements of this subdivision.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law shall serve as ex officio members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor’s Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are Provided, including staff assistance, equipment, and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter 29A of this code but shall be filed with the Secretary of State.

(g) A majority of the commission plus one shall constitute a quorum to do business.
(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of §6-9A-1 et seq. of this code. An “organizational meeting” means an initial meeting to discuss the commission’s procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from §6-9A-1 et seq. of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter 29B of this code, except for the list of the most qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of the most qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of the most qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of the most qualified persons and accompanying memoranda it submits to the Governor available for public inspection.
AN ACT to amend and reenact §29-5A-1 of the Code of West Virginia, 1931, as amended, relating to compensation for members of the State Athletic Commission for attendance and participation at public meetings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

(a) The State Boxing Commission, heretofore created, is hereby continued and renamed the State Athletic Commission. The commission shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner, or physicians’ assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay except that each member shall receive
$100 for each day that he or she attends and participates in a public meeting in which the commission makes or deliberates towards an official act: *Provided,* That the total compensation a member may receive during each fiscal year may not exceed $1,500.

(b) At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. If there is a vacancy in the board, the vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure.

(c) Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall, at the first meeting after their appointment, elect one of their number chairman of the commission and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may consider expedient; and they may hereafter amend or abrogate such rules.

(d) The concurrence of at least three commissioners is necessary to render a choice or decision of the commission except that, notwithstanding the requirements of the Open Governmental Proceedings Act, §6-9A-1 et seq. of this code, a quorum of the commission may vote in writing to approve changes to the roster of participants or the roster of officials if the need for the substitution(s) is made known to the commission within 48 hours of an event that the commission previously approved: *Provided,* That the substitution(s) is necessary to effectuate the match: *Provided, however,* That the written decision of the commission is presented at the next scheduled meeting of the commission and recorded in its minutes.
AN ACT to amend and reenact §29-5A-3, §29-5A-3a, §29-5A-8, §29-5A-14, §29-5A-20, and §29-5A-24 of the Code of West Virginia, 1931, as amended, all relating to the State Athletic Commission’s direction, management, and control over all boxing and mixed martial arts events, contests, and matches in West Virginia; authorizing the commission to promulgate legislative rules regulating said boxing and mixed martial arts events; authorizing the commission to issue, suspend, or revoke the licenses required to promote, contend in, judge, referee, or otherwise participate in said boxing and mixed martial arts events; establishing the requirements for licensure as a promoter, contestant, manager, trainer, judge, matchmaker, or official; establishing restrictions and prohibitions against conflicts of interest; and establishing appropriate rules for regulating and sanctioning amateur boxing events.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

1 (a) The commission has sole direction, management, 2 and control of the jurisdiction over all amateur, 3 professional, and semiprofessional boxing, sparring 4 matches, and exhibitions, or any form thereof, to be
conducted, held or given within the state by any club, individual, corporation, or association. As used in this article, the term “boxing” includes any fighting event that includes or permits the striking of an opponent with a closed fist, even if wrestling moves, elements of martial arts, or striking an opponent with the feet are also permitted. No boxing, sparring, or exhibition may be conducted, held, or given within the state except pursuant to the commission’s authority and held in accordance with this article. The commission may issue and revoke the license to conduct, hold, or give boxing or sparring matches or exhibitions to any club, corporation, association, or individual. Every license is subject to rules the commission may prescribe. Every application for a license shall be on a blank form provided by the commission. Upon application of the promoter’s license, the promoter shall pay a state license fee of $125 for one year. The fee is nonrefundable and shall be paid in the form of a certified check or money order issued to the Treasurer of the State of West Virginia to be deposited in the fund set forth in §29-5A-3b of this code. Nonprofit chartered and charitable organizations are exempt from this license fee for all amateur events. No municipal corporation may impose any license tax on boxing, sparring, or exhibition clubs, notwithstanding the provisions of any section of the code respecting municipal taxes and licenses. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation, or association, does not prevent the commission from canceling or revoking the license to conduct an event as provided in this section.

(b) In exercising its jurisdiction over professional and semiprofessional boxing, sparring matches, and exhibitions, the commission shall follow the current unified rules of boxing adopted by the Association of Boxing Commissions and requirements to enable the proper sanctioning of all participants, referees, judges, and matches or exhibitions and shall cooperate fully with the Association of Boxing Commissions in order that the sanctioning be extended to
state boxers. The commission shall supervise all amateur boxing conducted in this state and any such contest shall follow the amateur rules for boxing as recommended and adopted by the Association of Boxing Commissions, U.S.A. Boxing, the International Boxing Association, or any other appropriate governing or sanctioning body recognized and accepted by the commission. For full contact boxing events and other boxing events that follow nontraditional rules, the commission may impose any limitations or restrictions reasonably necessary to guarantee the safety of the participants and the fair and honest conducting of the matches or exhibitions and may refuse to license any event that poses an unreasonable degree of risk to the participants.

(c) In exercising jurisdiction over professional, semiprofessional, and amateur boxing as well as any other boxing event over which the commission has jurisdiction under §29-5A-3(b) of this code, the commission may propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, to implement the provision of this section including:

(1) Procedures and requirements for the issuance and renewal of licenses;

(2) Exemptions from licensure;

(3) Procedures for fining, suspending, or revoking the license of any holder of a license issued under this article;

(4) A schedule of licensing fees;

(5) Limitations or restrictions necessary to guarantee the safety of the participants;

(6) Requirements for fair and honest conducting of contests, matches, or exhibitions; and

(7) Any other rules necessary to effectuate the provisions of this article.
§29-5A-3a. Power to regulate mixed martial arts.

(a) The commission has sole power, direction, management, and control over all professional and amateur mixed martial arts contests, matches, and exhibitions, or any form thereof, to be promoted, conducted, held, or given within the state.

(b) As used in this article, the term “mixed martial arts” means a combative sporting contest, the rules of which allow two competitors to attempt to achieve dominance over one another by utilizing a variety of techniques including, but not limited to, striking, grappling, and the application of submission holds.

(c) A mixed martial arts contest, match, or exhibition promoted, conducted, held, or given within the state shall be under the commission’s authority and be in accordance with the provision of this section. The provisions of this article that apply to boxing shall also apply to mixed martial arts as appropriate.

(d) In exercising its jurisdiction over professional and amateur mixed martial arts contests, matches, and exhibitions, the commission shall follow the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions to enable the proper equipment, fighting area and weight classes to ensure the safety of contestants and ensure the licensing of all participants, referees, and judges, and the approval of contests, matches, or exhibitions conducted under the provisions of this section.

(e) The commission may issue and revoke a license to promote, conduct, hold, or give mixed martial arts contests, matches, or exhibitions and may issue and revoke a license to be a contestant. Each license is subject to the provisions of this section and this article and the rules of the commission.
(f) The commission 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, including:

(1) Procedures and requirements for the issuance and renewal of licenses: Provided, That the procedures and requirements may not:

(A) Limit or prohibit mixed martial arts contests, matches or exhibitions; nor

(B) Include a provision that a licensee be a West Virginia resident;

(2) Exemptions from licensure;

(3) Procedures for fining, suspending, or revoking the license of any holder of a license issued under this article;

(4) Adopting the unified rules of mixed martial arts;

(5) A schedule of licensing fees;

(6) Limitations or restrictions necessary to guarantee the safety of the participants;

(7) The requirements for fair and honest conducting of the contests, matches or exhibitions; and

(8) Any other rules necessary to effectuate the provisions of this section.

(g) Notwithstanding the provisions of this code to the contrary, a municipality may not impose a municipal license tax under §8-13-4 of this code on mixed martial arts clubs. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation, or association, does not prevent the commission from revoking the license to conduct an event as provided in this section: Provided, That nothing in this subsection limits the authority of a municipality to impose any other taxes or fees
§29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.

(a) The commission may issue a license to promote, conduct, or hold professional, semiprofessional or amateur boxing, or professional or amateur mixed martial arts sparring matches and exhibitions to any person, corporation, association, club, or organization eligible for a license under this article. In the case of a corporate applicant, the requirements for licensure shall pertain to its officers, directors, principal stockholders, and employees.

Before being granted a license or the renewal of a license under this subsection, the applicant shall establish to the satisfaction of the commission that he or she:

(A) Possesses the requisite skill, knowledge, and ability to promote, hold, and conduct a boxing or mixed martial arts contest, exhibition, or match;

(B) Is of good moral character;

(C) Has executed and filed a surety bond with the commission as required in §29-5A-15 of this code;

(D) Will conduct his or her business in a manner that furthers the public welfare, preserves the safety and health of participants, and advances the reputation and interests of the sports of boxing and mixed martial arts;

(E) Will adhere to and comply with all the rules of the commission pertaining to the license.

(b) The commission may issue a license to engage as a combatant in a boxing or mixed martial arts contest, exhibition, or match to any person eligible for a license under this article.
Before being granted a license or a renewal of a license issued under this subsection, the applicant shall establish to the satisfaction of the commission that he or she:

(A) Possesses the requisite fitness, skill, knowledge, and ability to compete as a professional, semiprofessional or amateur boxer, or a professional or amateur mixed martial artist;

(B) Is of good moral character;

(C) Will act in a manner that furthers the public welfare and advances the reputation and interests of the sports of boxing and mixed martial arts;

(D) Will adhere to and comply with all the rules and regulations of the commission pertaining to the license.

(c)(1) The commission may issue any other license required under this article including any license of a referee, judge, other official, manager, matchmaker, or trainer. In the case of a corporate applicant, the requirements for licensure shall pertain to its officers, directors, principal stockholders, and employees.

(2) Before being granted a license or the renewal of a license under this subsection, the applicant shall establish to the satisfaction of the commission that he or she:

(A) Possesses the requisite skill, knowledge, and ability in boxing and mixed martial arts;

(B) Is of good moral character;

(C) Will adhere to and comply with all the rules and regulations of the commission pertaining to the license;

(D) Will act in a manner that furthers the public welfare, preserves the safety and health of participants, and advances the reputation and interests of the sports of boxing and mixed martial arts.
(d) Every license and licensee is subject to such rules, and amendments thereof, as the commission may prescribe.

§29-5A-14. Suspension, revocation, etc., of license.

The commission shall have the additional authority and power to suspend, revoke, or place on probation the license of any licensee licensed under this chapter, who in the discretion of the commission:

(a) Fails to obey any lawful order of the commission, the secretary, or any inspector thereof;

(b) Is guilty of gross immorality;

(c) Lacks the requisite fitness, skill, knowledge, or ability to safely, properly, and competently promote, hold, conduct, engage, act, manage, contend in, judge, referee, officiate, or otherwise participate in a boxing or mixed martial arts contest;

(d) Violates any provision of this article or the rules of the commission;

(e) Secures any benefit, payment, reimbursement, agreement, contract, license, or title for himself, herself, or another related to a boxing or mixed martial arts contest, exhibition, or match through fraud, deceit, or material misrepresentation;

(f) Has a direct or indirect financial interest in the outcome or result of any boxing or mixed martial arts contest, exhibition, or event that he or she promotes, holds, or conducts;

(g) Has a direct or indirect financial interest in the outcome or result of any boxing or mixed martial arts contest, exhibition, or event in which he or she acts as a judge, referee, deputy, inspector, timekeeper, scorekeeper, or other official;
(h) Contracts, agrees, acts, engages, or attempts to promote, manage, train, or match any boxer or mixed martial artist without disclosing, through a written instrument, any direct or indirect financial interest in conflict with the boxer’s or mixed martial artist’s health, safety, competitive, or financial interests;

(i) Is licensed as a promoter and has a direct or indirect financial interest in the management of any boxer or mixed martial artist licensed by the commission;

(j) Is licensed as a manager and has a direct or indirect financial interest in the promotion of any boxing or mixed martial arts contest, exhibition, or match sanctioned by the commission: Provided, That a manager may receive any compensation expressly agreed to and disclosed in a written contract between the boxer and manager: Provided, however, That nothing in this section shall prohibit a boxer or mixed martial artist from acting as his own promoter or manager;


(l) Has been convicted of a felony or misdemeanor involving moral turpitude in any jurisdiction within one year preceding the suspension or revocation and such conviction not previously reported to the commission by said licensee;

(m) Is an habitual drunkard or addicted to the use of narcotics;

(n) Is or has become mentally incompetent;

(o) Is or has been guilty of unprofessional or unethical conduct, or such conduct as to require a suspension or revocation of license in the interest of the public;

(p) Has failed to furnish the proper party a copy of any contract or statement required by this chapter or the rules
and regulations promulgated hereunder, or has breached such a contract;

(q) Has loaned or permitted another person to use his or her license, or has borrowed or used the license of another;

(r) Has failed to maintain in force the bond required by this chapter;

(s) Has by act or omission conducted himself or herself in a manner which would tend to be detrimental to the best interests of boxing generally, or to the public interest and general welfare;

(t) Has been disciplined in any manner by the boxing commission or similar agency or body of any jurisdiction;

(u) Has failed to pay a fine or forfeiture imposed by this chapter;

(v) Has, either within or without this state, by any act, threat, statement, or otherwise, restrained, hindered, interfered with, or prevented another promoter, club, association, or booking agent, or has attempted, either within or without this state, in any such manner to restrain, hinder, interfere with, or prevent another promoter, club, association, or booking agent from presenting any boxing match or exhibition within or without the State of West Virginia;

(w) Has, either within or without this state, engaged, directly or indirectly, in restraints or monopolies or taken any action tending to create or establish restraints or monopolies or conspired with others to restrain any person or persons from participating or competing in any boxing match or exhibition for any promoter, club, association or booking agent.

§29-5A-20. Licenses for contestants, referees, and managers.

No contestant, trainer, inspector, referee, other official, matchmaker, or professional manager may take part in any
boxing or mixed martial arts contest or exhibition unless holding a license from the state that is issued by the commission upon payment of the following annual license fee schedule: Professional contestant $25; amateur contestant $20; trainer $20; inspector $30; referee or other official, $30; matchmaker $50; and professional manager $50. Semiprofessional contestants shall pay a license fee of $10 for each event. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the Treasurer of the State of West Virginia to be deposited in the State Athletic Commission Fund. If a license is not granted, the Treasurer shall refund the full amount.


(a) The commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.

(b) The commission shall propose such rules to regulate professional and semiprofessional boxers, professional or amateur mixed martial artists, professional and semiprofessional boxing matches and exhibitions and professional or amateur mixed martial arts matches and exhibitions: Provided, That for professional boxers and boxing matches and exhibitions, the commission rules shall comply with the current unified rules of boxing as adopted by the Association of Boxing Commissions; for professional mixed martial artists and mixed martial arts matches and exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions; for amateur boxers and boxing matches or exhibitions, the commission rules shall comply with the amateur rules for boxing as adopted by the Association of Boxing Commissions, U.S.A. Boxing, the International Boxing Association, or any other appropriate governing or sanctioning body recognized and accepted by the commission; and for amateur mixed martial artists and
mixed martial arts matches or exhibitions, the commission
rules shall comply with the current unified rules of mixed
martial arts as recommended and/or adopted by the
Association of Boxing Commissions. For full contact
boxing and other boxing events that follow nontraditional
rules, rules guaranteeing the safety of the participants and
the fair and honest conducting of the matches or exhibitions
are authorized.

(c) The commission shall propose separate rules for
amateur boxers and amateur boxing, sparring matches and
exhibitions as follows:

Rules which comply with the requirements of the rules
recommended or adopted by the Association of Boxing
Commissions, U.S.A. Boxing, the International Boxing
Association, or any other appropriate governing or
sanctioning body recognized and accepted by the
commission to the extent that any boxer complying with
them will be eligible to participate in any state, nationally,
or internationally sanctioned boxing match.

CHAPTER 121

(Com. Sub. for H. B. 2191 - By Delegates Westfall,
Espinosa and Barrett)

[Passed February 12, 2019; in effect from passage.]
[Approved by the Governor on February 25, 2019.]
permitted per limited video lottery game; removing restrictions on bill denominations accepted by limited video lottery terminals; and fixing the state’s share of gross terminal income at 50 percent on July 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

PART III.

DEFINITIONS.


“Operator” means a person holding an operator’s license granted under this article by the commission allowing the person to: (1) Own or lease a specified number of video lottery terminals from one or more manufacturers; (2) service and repair those video lottery terminals; (3) enter into contracts with limited video lottery retailers for placement of those video lottery terminals in a restricted access adult-only facility located on the premises of the limited video lottery retailers; and (4) operate limited video lottery terminals as a limited video lottery retailer, subject to the provisions of §29-22B-503 of this code.

PART V.

REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.

§29-22B-503. Additional qualifications for an applicant for an operator’s license.

(a) No operator’s license or license renewal may be granted unless the Lottery Commission has determined that, in addition to the general requirements set forth in §29-22B-502 of this code, the applicant satisfies all of the following qualifications:

(1)(A) If the applicant is an individual, the applicant has been a citizen of the United States and a resident of this state
for the four year period immediately preceding the application; or

(B) If the applicant is a corporation, partnership or other business entity, the chief executive officer and the majority of the officers, directors, members, and partners (to the extent each of these groups exists with respect to a particular business organization), both in number and percentage of ownership interest, have been citizens of the United States and residents of this state for the four year period immediately preceding the application.

(2) The applicant has demonstrated the training, education, business ability and experience necessary to establish, operate and maintain the business for which the license application is made;

(3) The applicant has secured any necessary financing for the business for which the license application is made, and the financing: (A) Is from a source that meets the qualifications of this section, and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee. A licensee shall request commission approval of any change in financing or leasing arrangements at least 30 days before the effective date of the change;

(4) The applicant has disclosed all financing or refinancing arrangements for the purchase, lease or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the Lottery Commission;

(5) The applicant has filed with the Lottery Commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease or other assignment to the operator of video lottery terminals, the electronic computer components of the terminals, the random number generators of the terminals, or the cabinets in which they are housed; and
(6) The applicant does not hold any other license under this article, §19-23-1, et seq., §29-22-1, et seq., §29-22A-1, et seq., or §29-25-1, et seq. of this code, except that an applicant may also be licensed as a service technician. In addition, an applicant may also be licensed as a limited video lottery retailer: Provided, That a licensed operator that also is a licensed retailer may operate limited video lottery terminals as a limited video lottery retailer at no more than 10 locations: Provided, however, That the Director may authorize the operator to operate limited video lottery terminals as a limited video lottery retailer at more than 10 locations if the applicant provides sufficient justification that such approval is necessary to sustain state revenues without a detrimental impact on public interest, further shows that a qualified retailer is unavailable and a good faith effort to identify a qualified retailer was made prior to the request, and an explanation of other relevant information supporting such request.

(b)(1) A person or a member of his or her immediate family who has an ownership interest in a business entity that submits an application for an operator’s license may not: (A) Submit an application for another operator’s license as an individual, (B) serve as an officer, director, member, or partner of a business entity that submits an application for another operator’s license, or (C) have an ownership interest in any other business entity that submits an application for an operator’s license.

(2) Business entities that have common owners or common officers, directors, members, or partners may not hold more than one operator’s license.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer’s license.

No limited video lottery retailer’s license or license renewal may be granted unless the Lottery Commission has determined that, in addition to the general requirements set
forth in §29-22B-502, the applicant satisfies all of the following qualifications:

(1)(A) If the applicant is an individual, the applicant has been a citizen of the United States and a resident of this state for the four year period immediately preceding the application;

(B) If the applicant is a corporation, partnership or other business entity, the chief executive officer and the majority of the officers, directors, members, and partners (to the extent each of these groups exists with respect to a particular business organization), both in number and percentage of ownership interest, have been citizens of the United States and residents of this state for the four year period immediately preceding the application;

(2) The applicant has disclosed to the Lottery Commission the identity of each person who has control of the applicant, as control is described in §29-22B-507 of this code;

(3) The applicant holds either: (A) A valid license issued under §60-7-1 et seq. of this code to operate a private club, (B) a valid Class A license issued under §11-16-1 et seq. of this code to operate a business where nonintoxicating beer is sold for consumption on the premises, or (C) both licenses;

(4) The applicant has demonstrated the training, education, business ability and experience necessary to establish, operate and maintain the business for which the license application is made;

(5) The applicant has secured any necessary financing for the business for which the license application is made and the financing: (A) Is from a source that meets the qualifications of this section, and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee;
(6) The applicant has disclosed all financing or refinancing arrangements for placement on the applicant’s premises of video lottery terminals and associated equipment in the degree of detail requested by the Lottery Commission;

(7) The applicant has filed with the Lottery Commission a copy of any current or proposed agreement between the applicant and a licensed operator for the placement on the applicant’s premises of video lottery terminals;

(8) The applicant has filed with the Lottery Commission a copy of any current or proposed agreement between the applicant and a licensed operator or other person for the servicing and maintenance of video lottery terminals by licensed service technicians; and

(9) The applicant does not hold any other license under this article, §19-23-1 et seq., or §29-22A-1 et seq., or §29-25-1 et seq. of this code except that an applicant may also be licensed as a service technician. In addition, an applicant may also be licensed as an operator, subject to provisions of §29-22B-503(a)(6) of this code.

### PART IX.

**VIDEO LOTTERY HARDWARE AND SOFTWARE.**

§29-22B-903. Coin or bill acceptors.

(a) A minimum of one electronic or mechanical coin acceptor or other means by which to accurately and efficiently establish credits must be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors.

(b) The Lottery Commission shall approve all coin and bill acceptors prior to use on any video lottery terminal in this state.
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(c) A video lottery terminal shall not allow more than $5 to be wagered on a single game.

PART XIV.

NET TERMINAL INCOME AND DISTRIBUTION OF REVENUES.

§29-22B-1408. Distribution of state’s share of gross terminal income.

(a) The state’s share of gross terminal income is calculated as follows:

(1) The commission shall deposit two percent of gross terminal income into the State Lottery Fund for the commission’s costs and expenses incurred in administering this article. From this amount, not less than $150,000 nor more than $1 million per fiscal year, as determined by the commission each year, shall be transferred to the Compulsive Gambling Treatment Fund created in §29-22A-19 of this code. In the event that the percentage allotted under this subsection for the commission’s costs and expenses incurred in administering this article generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed $250,000. On a monthly basis, the director shall report to the Joint Committee on Government and Finance of the Legislature any surplus in excess of $250,000 and remit to the State Treasurer the entire amount of those surplus funds in excess of $250,000 to be deposited in the fund established in §29-22-18a of this code: Provided, That at the close of each of the fiscal years ending June 30, 2006, 2007, 2008, 2009, 2010 and 2011, the portion of the two percent allowance for administrative expenses provided in this subdivision (1) that remains unspent for costs and expenses incurred in administering this article, not to exceed $20 million in any fiscal year, shall be transferred to the Revenue Center Construction Fund created by §29-22-18(1) of this code for the purpose of constructing a state office building.
(2) Gross profits are determined by deducting the percentage described in subdivision (1) of this subsection, from gross terminal income.

(3) The commission shall receive 30 percent of gross profits as defined in subdivision (2) of this subsection except as otherwise provided in this subdivision. On June 1, 2002, the commission shall calculate the aggregate average daily gross terminal income for all operating video lottery terminals during the preceding three month period. Thereafter, the commission shall make the calculation on the first day of the month preceding the months of October, January, April, and July of each year. So long as the aggregate average gross terminal income per day for the operating video lottery terminals does not exceed $60, the commission’s share of gross profits shall continue to be 30 percent for the succeeding quarter of the year beginning July 1. Beginning on July 1, 2002 and the first days of October, January, April, and July in 2002 and thereafter, if the commission’s calculation of aggregate average daily gross terminal income per video lottery terminal yields an amount greater than $60, one of the following schedules apply: If the amount is greater than $60 per day but not greater than $80 per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be 34 percent; if the amount is greater than $80 per day but not greater than $100 per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be 38 percent; if the amount is greater than $100 per day but not greater than $120 per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be 42 percent; if the amount is greater than $120 per day but not greater than $140 per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be 46 percent; if the amount is greater than $140 per day, the commission’s
share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be 50 percent: Provided, That effective July 1, 2019, the commission’s share of gross profits shall be 50 percent. This amount shall be known as net terminal income.

(b) Net terminal income shall be distributed by the commission as follows:

(1)(A) Beginning July 1, 2002, a county and the incorporated municipalities within that county shall receive two percent of the net terminal income generated by limited video lottery terminals located within the county;

(B) From this two percent of net terminal income, each municipality shall receive a share that bears the same proportion to the total two percent of net terminal income as the population of the municipality bears to the total population of the county as determined by the most recent decennial United States census of population, and the county shall receive the remaining portion of the two percent of net terminal income; and

(2) Any remaining funds shall be deposited into the state excess lottery revenue fund established in §29-22-18a of this code.

(c) The licensed operators and limited video lottery retailers shall receive the balance of gross terminal income remaining after deduction of the state’s share as calculated pursuant to this section.
CHAPTER 122


[Passed March 1, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, relating to prohibiting state licensing boards from hiring lobbyists; and declaring that the director, board counsel and appointed board members of each board may lobby on behalf of the board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-22. Lobbying.

1 No board may employ or contract with any person whose job functions or obligations include lobbying on behalf of the board: Provided, That the director, board counsel and appointed board members may lobby on behalf of the board.
AN ACT to repeal §5A-6-4a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5A-6B-1, §5A-6B-2, §5A-6B-3, §5A-6B-4, §5A-6B-5 and §5A-6B-6, all relating to cybersecurity of state government; removing the requirements of the Chief Technology Officer to oversee security of government information; creating the Cybersecurity Office; defining terms; providing that the Chief Information Security Officer to oversee the Cybersecurity Office; authorizing the Chief Information Security Officer to create a cybersecurity framework, to assist and provide guidance to agencies in cyber risk strategy and setting forth other duties; providing rule-making authority; requiring agencies to undergo cyber risk assessments; establishing scope of authority; exempting certain state entities; designating reporting requirements; requiring agencies to address any cybersecurity deficiencies; exempting information related to cyber risk from public disclosure; and requiring annual reports to the Joint Committee on Government and Finance and to the Governor on the status of the cybersecurity program, including any recommended statutory changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4a. Duties of the Chief Technology Officer relating to security of government information.
ARTICLE  6B. CYBER SECURITY PROGRAM.

§5A-6B-1. West Virginia Cybersecurity Office; scope; exemptions.

(a) There is hereby created the West Virginia Cybersecurity Office within the Office of Technology. The office has the authority to set standards for cybersecurity and is charged with managing the cybersecurity framework.

(b) The provisions of this article are applicable to all state agencies, excluding higher education institutions, the State Police, state constitutional officers identified in §6-7-2 of this code, the Legislature and the Judiciary.

§5A-6B-2. Definitions.

As used in this article:

“Cybersecurity framework” means computer technology security guidance for organizations to assess and improve their ability to prevent, detect, and respond to cyber incidents.

“Cyber incident” means any event that threatens the security, confidentiality, integrity, or availability of information assets, information systems, or the networks that deliver the information.

“Cyber risk assessment” means the process of identifying, analyzing and evaluating risk and applying the appropriate security controls relevant to the information custodians.

“Cyber risk management service” means technologies, practices and policies that address threats and vulnerabilities in networks, computers, programs and data, flowing from or enabled by connection to digital infrastructure, information systems or industrial control systems, including, but not limited to, information security, supply chain assurance, information assistance and hardware or software assurance.
“Enterprise” means the collective departments, agencies and boards within state government that provide services to citizens and other state entities.

“Information custodian” means a department, agency or person that has the actual custody of, or is responsible for the accountability for a set of data assets.

“Plan of action and milestones” means a remedial plan, or the process of accepting or resolving risk, which helps the information custodian to identify and assess information system security and privacy weaknesses, set priorities and monitor progress toward mitigating the weaknesses.

“Privacy impact assessment” means a procedure or tool for identifying and assessing privacy risks throughout the development life cycle of a program or system.

“Security controls” means safeguards or countermeasures to avoid, detect, counteract or minimize security risks to physical property, information, computer systems or other assets.

§5A-6B-3. Powers and duties of Chief Information Security Officer; staff; rule-making.

(a) The West Virginia Cybersecurity Office is under the supervision and control of a Chief Information Security Officer appointed by the Chief Technology Officer and shall be staffed appropriately by the Office of Technology to implement the provisions of this article.

(b) The Chief Information Security Officer has the following powers and duties:

1. Develop policies, procedures and standards necessary to establish an enterprise cybersecurity program that recognizes the interdependent relationship and complexity of technology in government operations and the nature of shared risk of cyber threats to the state;
(2) Create a cyber risk management service designed to ensure that officials at all levels understand their responsibilities for managing their agencies’ cyber risk;

(3) Designate a cyber risk standard for the cybersecurity framework;

(4) Establish the cyber risk assessment requirements such as assessment type, scope, frequency and reporting;

(5) Provide agencies cyber risk guidance for information technology projects, including the recommendation of security controls and remediation plans;

(6) Assist agencies in the development of plans and procedures to manage, assist and recover in the event of a cyber incident;

(7) Assist agencies in the management of the framework relating to information custody, classification, accountability and protection;

(8) Ensure uniformity and adequacy of the cyber risk assessments;

(9) Notwithstanding the provisions of §5A-6B-1(b) of this code, enter into agreements with state government entities exempted from the application of this article or other political subdivisions of the state that desire to voluntarily participate in the cybersecurity program administered pursuant to this article;

(10) Develop policy outlining use of the privacy impact assessment as it relates to safeguarding of data and its relationship with technology; and

(11) Perform such other functions and duties as provided by law and as directed by the Chief Technology Officer.
(c) The Secretary of the Department of Administration shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement and enforce the provisions of this article.

§5A-6B-4. Responsibilities of agencies for cybersecurity.

State agencies and other entities subject to the provisions of this article shall:

1. Undergo an appropriate cyber risk assessment as required by the cybersecurity framework or as directed by the Chief Information Security Officer;

2. Adhere to the cybersecurity standard established by the Chief Information Security Officer in the use of information technology infrastructure;

3. Adhere to enterprise cybersecurity policies and standards;

4. Manage cybersecurity policies and procedures where more restricted security controls are deemed appropriate;

5. Submit all cybersecurity policy and standard exception requests to the Chief Information Security Officer for approval;

6. Complete and submit a cyber risk self-assessment report to the Chief Information Security Officer by December 31, 2020; and

7. Manage a plan of action and milestones based on the findings of the cyber risk assessment and business needs.

§5A-6B-5. Exemption from disclosure.

Any information, including, but not limited to, cyber risk assessments, plans of action and milestones, remediation plans, or information indicating the cyber threat, vulnerability, information or data that may identify
5 or expose potential impacts or risk to agencies or to the state
6 or that could threaten the technology infrastructure critical
7 to government operations and services, public safety or
8 health is exempt from §29B-1-1 *et seq.* of this code.

§5A-6B-6. Annual reports.

The Chief Information Security Officer shall annually, 1
beginning on December 1, 2019, and on December 1 of each 2
year thereafter, report to the Joint Committee on 3
Government and Finance and to the Governor on the status 4
of the cybersecurity program, including any recommended 5
statutory changes.

CHAPTER 124

(H. B. 2510 - By Delegates Howell, Pack, Hott, 1
Hamrick, Dean, Graves, Ellington, Linville, 2
Higginbotham, Butler and Kessinger)

[Passed March 1, 2019; in effect ninety days from passage.] 1
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §30-1-10 of the Code of West 2
Virginia, 1931, as amended, relating to special funds of boards 3
of examination or registration; requiring notice by Treasurer 4
to Legislative Auditor of certain transfers; requiring review of 5
the fee structure of board by Legislative Auditor under certain 6
circumstances; and requiring report to Joint Standing 7
Committee on Government Organization.

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

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO**
**ALL STATE BOARDS OF EXAMINATION OR**
**REGISTRATION REFERRED TO IN CHAPTER.**
§30-1-10. Disposition of money fines; legislative audit; review of board’s fee structure.

(a) The secretary of every board referred to in this chapter shall receive and account for all money which it derives pursuant to the provisions of this chapter which are applicable to it. With the exception of money received as fines, each board shall pay all money which is collected into a separate special fund of the State Treasury which has been established for each board. This money shall be used exclusively by each board for purposes of administration and enforcement of its duties pursuant to this chapter. Any money received as fines shall be deposited into the General Revenue Fund of the State Treasury. When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or $10,000, whichever is greater, the State Treasurer shall:

(1) Transfer the excess amount to the state General Revenue Fund; and

(2) Notify the Legislative Auditor that the transfer has been made.

(b) (1) Every licensing board which is authorized by the provisions of this chapter shall be subject to audit by the office of the Legislative Auditor.

(2) Within a reasonable time after the State Treasurer notifies the Legislative Auditor of a transfer required to be made under this section, the Legislative Auditor shall conduct a review of the fee structure of the applicable board to determine if the amount of the board’s fees generate excessive revenue, when compared to the board’s normal expenses. If the Legislative Auditor finds that excess revenue is generated, he or she shall report his or her findings to the Legislature’s Joint Standing Committee on Government Organization, along with recommendations on how the fees can be adjusted to generate only the amount the board reasonably needs to operate under this chapter.
AN ACT to amend and reenact §5A-10-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-10-12, all relating to the real estate division; requiring the review and approval of grounds, buildings, office and other space leases; and providing for review and approval of leasing grounds, buildings, office and other space to nongovernmental entities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-4. Leasing of space by executive director; delegation of authority.

(a) The executive director is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency, or institution of state government: Provided, That the executive director may expressly delegate, in writing, the authority granted to him or her by this article to the appropriate department, agency or institution of state government when the rental and other costs to the state do not exceed the sum specified by regulation in any one fiscal year or when necessary to meet bona fide emergencies arising from unforeseen causes.

(b) Any state agency that is authorized to enter into lease agreements must seek the advice and approval of the executive director before entering into any lease of grounds, buildings,
14 office and other space. The executive director shall submit
15 approval of any lease by signing the lease in conjunction with
16 the state agency. The state agencies referenced in §5A-10-2 of
17 this code are exempt from this requirement.

§5A-10-12. Lease of state properties to nongovernmental entities.

(a) All state agencies, except for those listed in §5A-10-
2 2 of this code, intending to lease grounds, buildings, office
3 and other space to nongovernmental entities shall seek the
4 advice and approval of the Real Estate Division to review
5 any lease and ensure the provisions are in the best interest
6 of the state.

(b) The Real Estate Division will review the lease and
7 will submit to the state agency:
8
9 (1) Written approval of the lease; or,

10 (2) Written objections to proposed terms of the lease and
11 suggestions to ensure the lease is in the best interest of the state.

12 The state agency may rebut any objections as
13 circumstances may require, however, the Real Estate Division
14 must approve any objections before the lease can be signed.

CHAPTER 126

(H. B. 2816 - By Delegates Campbell, Canestraro,
Higginbotham, Lavender-Bowe, Atkinson, Williams,
R. Thompson, Caputo, Hornbuckle, Dean and Pack)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]
amend and reenact §16-22A-4 of said code; to amend and reenact §16-35-2 of said code; to amend and reenact §18-20-1a and §18-20-1b of said code; to amend and reenact §29-3-16a of said code; to amend and reenact §52-1-8 of said code; and to amend and reenact §57-5-7 of said code, all relating to removing the terms “hearing impaired,” “hearing impairment,” and “deaf mute” from the West Virginia Code and substituting the terms “deaf or hard of hearing,” “hard of hearing,” “hearing difficulties,” or “difficulties in hearing” according to context.

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 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-1. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (a) There is a need for West Virginia to adequately identify the deaf or hard of hearing population and provide efficient and effective services to such population;

3 (b) Deaf or hard of hearing people need to be more involved in the decisions and programs that affect their lives by soliciting and seriously considering their collective opinion on appropriate matters;

4 (c) Cooperation among state and local agencies must be facilitated in an effort to ensure that adequate and appropriate services are available and provided;

5 (d) In order to further the aforementioned goals it is necessary to determine what services exist and what
services can be developed in order to match services to individual needs;

(e) A rubella epidemic from 1963 to 1965 caused a number of infants in West Virginia to be born deaf or hard of hearing. These individuals are approaching the ages where they will no longer be eligible for educational services, thus requiring services as young adults. The Legislature, therefore, declares that there is an unprecedented and imperative need to plan and prepare for the multiplicity of services required in order to ensure a life-long continuum of services to this particular population;

(f) There must be more emphasis on the use of interpreters for deaf and hard of hearing people and on the quality control of such services;

(g) There must be more emphasis on the use of telecommunication devices for the deaf (TDDs) and means to provide them for deaf or hard of hearing people;

(h) Through the implementation of the provisions of this article, the deaf and hard-of-hearing population of West Virginia will be aided in their efforts to live independent and productive lives.

§5-14-2. Definitions.

As used in this article:

(a) “Deaf” means severe to profound impairment of the sense of hearing whereby the understanding of speech is unattainable through the ear alone with or without amplification, and visual communication is used as the primary mode of communication.

(b) “Hard of hearing” means significant impairment to the sense of hearing, but not to the extent that the person must rely primarily on visual communication.
§5-14-3. Continuation of commission; membership.

(a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within the Department of Health and Human Resources consisting of 17 persons, eight of whom shall serve ex officio. The remaining members are appointed by the Governor by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission’s expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters.

(b) The members are: The Secretary of the Department of Health and Human Resources, or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the Commissioner of the Bureau for Public Health, or his or her designee; the State Superintendent of Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or her designee; the Commissioner of the Division of Human Services, or his or her designee; the Chairman of the Advisory Council for the Education of Exceptional Children, or his or her designee; and the Superintendent of the West Virginia School for the Deaf and Blind, or his or her designee, all of whom serve ex officio with full voting privileges.

(c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the deaf or hard of hearing, one audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of five people recommended by the Board of the West Virginia Association of the Deaf.
§5-14-5. Powers and duties of the commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

(a) The commission shall maintain a clearinghouse of information, the purpose of which is to aid deaf or hard of hearing persons and others in obtaining appropriate services or information about such services, including, but not limited to, education, communication (including interpreters), group home facilities, independent living skills, recreational facilities, employment, vocational training, health and mental health services, substance abuse and other services necessary to assure their ability to function in society. The commission shall consult existing public and private agencies and organizations in compiling and maintaining the clearinghouse.

(b) The commission shall establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters for the deaf and a list of qualified and certified teachers of American sign language.

(c) The Secretary of the Department of Health and Human Resources shall promulgate rules pursuant to §29A-3-1 et seq. of this code for the state quality assurance evaluation, including the establishment of required qualifications and ethical standards for interpreters, the approval of interpreters, the monitoring and investigation of interpreters and the suspension and revocation of approvals. The commission may conduct interpreter evaluations and collect and expend funds with regard thereto.

(d) The commission shall develop an outreach program to familiarize the public with the rights and needs of deaf or hard of hearing people and of available services.

(e) The commission shall investigate the condition of the hearing-impaired in this state with particular attention to those who are aged, homeless, needy, victims of rubella and victims of abuse or neglect. It shall determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission
§5-14-8. Executive director; staff.

There shall be within the commission an executive director who shall be appointed by the commission and whose compensation shall be fixed by the commission within the budgetary appropriation thereof. The executive director shall be in the exempt class of civil service and may not be a member of the commission. The executive director may attend all meetings of the commission, as well as its committees, but has no vote on decisions or actions of the commission or its committees. The executive director shall carry out the decisions and actions of the commission, hire all staff, administer all affairs of the commission in accordance with its policies and discharge such other duties as the commission shall from time to time determine. The commission may employ such other officers, employees and clerical assistants as it considers necessary and may fix their compensation within the amounts made available by appropriation. To the extent possible, the executive director shall be deaf or hard of hearing and shall be proficient in communicating with deaf or hard of hearing individuals using varying communication modes.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

PART I. POWERS OF TAXATION


Every municipality has the plenary power and authority to levy and collect an excise tax on the privilege of purchasing, using or consuming, within the corporate limits of the municipality, public utility services and tangible personal property from public utilities subject to the jurisdiction of the Public Service Commission of West Virginia. The tax is computed on the basis of an amount not
to exceed two percent of the gross amount of each periodic statement rendered purchasers or consumers by public utilities: *Provided*, That sales of tangible personal property such as appliances or the like, as distinguished from the public service supplied, are not included in the gross amount subject to the measure of this tax: *Provided, however*, That this tax does not apply to sales of telecommunications services to another telecommunications provider for the purposes of access, interconnection or resale to consumers. Charges or fees for items on the periodic statement that are not public utility services, including surcharges for telecommunications relay services for the deaf or hard of hearing and fees for enhanced emergency telephone systems, are not included in the gross amount subject to the measure of this tax. The purchasers or consumers shall pay to the public utilities the amount of the tax levied pursuant to this section which is added to and constitutes a part of the cost of the service or property so purchased or consumed and is collectible as such by the public utilities who shall account to the municipality levying same for all tax paid by the purchasers or consumers pursuant to the provisions of any ordinance imposing the tax.

Any ordinance imposing the tax shall require the collection thereof uniformly from all purchasers and consumers of all the services and property within the corporate limits of the municipality and contain reasonable rules governing the collection thereof by the utilities and the method of its payment and accounting to the municipality: *Provided*, That the tax is not effective until the municipality gives 60 days written notice by certified mail to any utility doing business therein of the effective date of the ordinance. Any required separation of gross income shall occur in the ordinance whenever necessary to comply with state or federal law: *Provided, however*, That the tax authorized by this section may not be levied upon charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges for telephone calls to points outside the taxing municipality: *Provided*
further, That specific charges for telephone calls to points outside the taxing municipality is construed to mean separately itemized or bulk-billed charges for long distance telecommunications service to points outside the local exchange service area. The charges subject to the tax authorized by this section include local usage charges applicable to telephone calls originating within the corporate limits of the municipality which imposes the tax, regardless of where the calls terminate, and also include the federal subscriber line charge.

Notwithstanding any other provisions of the law to the contrary contained in the Code of West Virginia, 1931, as amended, the provisions of this section are in addition to all other taxing authority heretofore granted municipalities.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.

§16-22A-4. Hearing impairment testing advisory committee established.

(a) There is hereby established a West Virginia hearing difficulties testing advisory committee which shall advise the Director of the Division of Health regarding the protocol, validity, monitoring and cost of testing procedures required under this article. This committee is to meet four times per year for the initial two years and on the call of the director thereafter. The director shall serve as the chair and shall appoint 12 members, one representing each of the following groups:

(1) A representative of the health insurance industry;
(2) An otolaryngologist or otologist;
(3) An audiologist with experience in evaluating infants;
(4) A neonatologist;
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14 (5) A pediatrician;
15 (6) A hospital administrator;
16 (7) A speech or language pathologist;
17 (8) A teacher or administrative representative from the
18 West Virginia school of the deaf;
19 (9) A parent of a deaf or hard of hearing child;
20 (10) A representative from the office of early
21 intervention services within the Department of Health and
22 Human Resources;
23 (11) A representative from the state Department of
24 Education; and
25 (12) A representative from the West Virginia
26 commission for the deaf and hard-of-hearing.
27 (b) Members of this advisory committee shall serve
28 without compensation. A majority of members constitutes a
29 quorum for the transaction of all business. Members shall
30 serve for two-year terms and may not serve for more than
31 two consecutive terms.

ARTICLE 35. LEAD ABATEMENT.

§16-35-2. Legislative findings.
1 (a) The Legislature hereby finds and declares that:
2 (1) Lead is a toxic substance and harmful to the citizens
3 of this state;
4 (2) Lead poisoning is a devastating health hazard,
5 particularly to young children, and results in serious long-
6 term health effects;
7 (3) Children exposed to even low levels of lead exhibit
8 learning disabilities, decreased growth, hyperactivity,
9 deafness or hearing difficulties, and neurological damage;
(4) Workers and others who come into contact with lead when removing or remediating lead-based materials are also at risk of lead poisoning;

(5) Exposure occurs from contact with materials containing lead, including, but not limited to, lead-based paint chips, lead dust, and lead-contaminated soil;

(6) The most significant source of exposure is lead-based paint, particularly in houses built prior to one thousand nine hundred seventy-eight;

(7) The danger posed by lead-based paint hazards can be controlled by abatement or interim controls that limit exposure to lead-based paint hazards; and

(8) The public health and safety of this state will be better protected when all persons who handle lead-contaminated substances are thoroughly trained and knowledgeable regarding safe methods of handling and disposing of such materials.

(b) Therefore, It is the purpose of this article to protect the health of the children of the state and those who undertake remediation of the lead health hazard by establishing guidelines for the assessment and removal of lead hazards from homes and other buildings where children are frequently present and exposed to the danger of lead poisoning.

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1a. Preschool programs for severely disabled children; rules and regulations.

(a) During the school year beginning on July 1, 1985, each county board of education shall develop a coordinated service delivery plan in accordance with standards for preschool programs for severely disabled children to be
developed by the State Board of Education and begin services where plans are already developed.

(b) Only in any year in which funds are made available by legislative appropriation, and only to the extent of such funding, each county board of education shall establish and maintain a special educational program, including, but not limited to, special classes and home-teaching and visiting-teacher services for all severely disabled children between the ages of three and five according to the following schedule:

(1) By the school year beginning on July 1, 1986, and thereafter, for severely disabled children who are age four before September 1, 1986;

(2) By the school year beginning on July 1, 1987, and thereafter, for severely disabled children who are age three before September 1, 1987.

As used in this section, the term “severely disabled children” means those children who fall in any one of the following categories as defined or to be defined in the State Board of Education standards for the education of exceptional children: Severe behavioral disorders, severely speech and language impaired, deaf-blind, deafness or hearing difficulties, autistic, physically handicapped, disabled profoundly intellectually disabled, trainable intellectually disabled or visually impaired.

Before August 1, 1985, the State Board of Education shall adopt rules and regulations to advance and accomplish this program and to assure that an appropriate educational program is available to all such children in the state, including children in mental health facilities, residential institutions and private schools.

This section does not prevent county boards of education from providing special education programs, including, but not limited to, special schools, classes, regular class programs and home-teaching or visiting-
teacher services for severely disabled preschool children prior to such times as are required by this section. In addition, county boards of education may provide these services to preschool exceptional children in disability categories other than those listed above.

§18-20-1b. Preschool programs for handicapped children; rules and regulations.

(a) During the school year beginning on July 1, 1991, each county board of education shall develop a coordinated service delivery plan in accordance with standards for preschool programs for handicapped children to be developed by the State Board of Education and begin services where plans are already developed.

(b) Each county board of education shall establish and maintain special education programs, including, but not limited to, special classes, regular classes and home-teaching and visiting-teacher services for all handicapped children ages three through five, inclusive.

As used in this section, the term “handicapped children” means those children who fall in any one of the following categories as defined or to be defined in the State Board of Education standards for the education of exceptional children: Severe behavioral disorders, communication disordered, deaf-blind, developmentally delayed, deaf or hard of hearing, other health impaired including autism, physically handicapped, mentally impaired or visually impaired.

Before August 1, 1991, the State Board of Education shall adopt rules to advance and accomplish this program and to assure that an appropriate educational program is available to all such children in the state, including children in mental health facilities, residential institutions, foster care, correctional facilities and private schools.

This section does not prevent county boards of education from providing special education programs,
including, but not limited to, special schools or classes, regular class programs and home-teaching or visiting-teacher services for severely handicapped preschool children prior to such times as are required by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

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.

(a) 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.

(b) 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.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hard of hearing, 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 hard of hearing individual of the danger of fire.

(d) 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.

(e) 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 24 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 52. JURIES.

ARTICLE 1. PETIT JURIES.

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

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

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

(1) Is not a citizen of the United States, at least 18 years old and a resident of the county;

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

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

(4) Has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magistrate court juror and has attended sessions of the magistrate or circuit court and been reimbursed for his or her expenses as a juror pursuant to the provisions of §52-1-21 or §52-2-13 of this code, or pursuant to an applicable rule or regulation of the Supreme Court of Appeals promulgated pursuant to the provisions of §50-5-8 of this code;

(5) Has lost the right to vote because of a criminal conviction; or

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

(c) A prospective juror 70 years of age or older is not disqualified from serving but shall be excused from service by the court upon his or her request.
(d) A prospective grand juror is disqualified to serve on a grand jury if he or she is an officeholder under the laws of the United States or of this state except that the term “officeholder” does not include, notaries public.

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

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

(2) The court shall administer an oath or affirmation to any person present to facilitate communication for a disabled juror. The substance of the oath or affirmation shall be that any person present as an accommodation to a disabled juror will not deliberate on his or her own behalf, although present throughout the proceedings, but act only to accurately communicate for and to the disabled juror.

(f) Nothing in this article limits a party’s right to preemptory strikes in civil or criminal actions.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

(a) In any court proceeding wherein a party or witness or juror cannot readily understand or verbally communicate the English language because the witness or juror is deaf or
because of any other hearing difficulties, such person shall have the right to have a qualified interpreter to assist the witness or juror at every stage of the proceeding. Such right shall also pertain in any proceeding before administrative boards, commissions or agencies of this state or any political subdivision or municipality thereof, and in coroners’ inquests and grand jury proceedings.

(b) The director of the administrative office of the Supreme Court of Appeals shall establish a program to facilitate the use of interpreters in courts of this state and in extra-judicial criminal proceedings as provided for in this section.

(1) The director shall prescribe, determine and certify the qualifications of persons who may serve as certified interpreters in courts of this state in proceedings involving the deaf and hard of hearing. Persons certified by the director shall be interpreters certified by the national registry of interpreters for the deaf, or the West Virginia registry of interpreters for the deaf or approved by the chief of services for the deaf and hard of hearing of West Virginia of the West Virginia Division of Vocational Rehabilitation, or shall be such other persons deemed by the director to be qualified by education, training and experience. The director shall maintain a current master list of all interpreters certified by the director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters.

(2) Each circuit court shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as oral or manual interpreters for the deaf and hard of hearing by the director of the administrative office of the Supreme Court of Appeals in accordance with the certification program established pursuant to this section.

(3) In any criminal or juvenile proceeding, or other proceeding described in §51-11-5 of this code, the judge of the circuit court in which such proceeding is pending, or, if
such proceeding is in a magistrate court, then the judge of the circuit court to which such proceeding may be appealed or presented for judicial review, shall, with the assistance of the director of the administrative office of the Supreme Court of Appeals, utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the judge, the services of an otherwise competent interpreter, if the judge determines on his or her own motion or on the motion of a party that such party or a witness who may present testimony in the proceeding suffers from hearing difficulties so as to inhibit such party’s comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness’ comprehension of questions and the presentation of such testimony. The utilization of an interpreter shall be appropriate at any stage of the proceeding, judicial or extra-judicial, at which a person would be entitled to representation by an attorney and a waiver of the right to counsel shall not constitute a waiver of the right to an interpreter as provided for by this section.

(c) Whenever a qualified interpreter is appointed pursuant to the provisions of subsection (b) of this section, or to accommodate a juror, the court shall, at the conclusion of the proceedings or interrogation, by order, fix the compensation of such interpreter. The compensation shall include reimbursement for all reasonable and necessary expenses actually incurred in the performance of such duties, but expenses shall not be incurred in excess of the prevailing rate for state employees. In all such appointments arising from subdivision (3), subsection (b) of this section, the compensation shall be paid by the State Auditor from the fund administered by the Supreme Court of Appeals for other court costs. In other proceedings before any circuit or magistrate court, Supreme Court of Appeals or before any administrative boards, commissions and agencies, the compensation shall be fixed by such court, board,
commission or agency and paid, within the limit of available funds, by such court, board, commission or agency.

(d) In any proceeding described in subdivision (3), subsection (b) of this section, if the circuit judge does not appoint an interpreter, an individual requiring the services of an interpreter may seek the assistance of the clerk of the circuit court or the director of the administrative office of the Supreme Court of Appeals in obtaining the assistance of a certified interpreter.

(e) Whenever an interpreter is necessary in any court proceeding because a witness or party speaks only a foreign language or for any other reason, an interpreter shall be sworn truly to interpret.

CHAPTER 127

(H. B. 2856 - By Delegate Householder)
[By Request of the West Virginia State Auditor]
[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §32-4-406 of the Code of West Virginia, 1931, as amended, relating to the administration of the operating fund of the securities division of the Auditor’s office; and providing for certain funds to be transferred to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§32-4-406. Administration of chapter; operating fund for securities department.
(a) This chapter shall be administered by the Auditor of this state and he or she is hereby designated, and shall be, the commissioner of securities of this state. He or she has the power and authority to appoint or employ such assistants as are necessary for the administration of this chapter.

(b) The Auditor shall set up a special operating fund for the securities division in his or her office. The Auditor shall pay into the fund 20 percent of all fees collected as provided for in this chapter. If, at the end of any fiscal year, the balance in the special operating fund exceeds 20 percent of the gross revenues from the special operating fund operations, the excess shall be transferred to the General Revenue Fund.

The special operating fund shall be used by the Auditor to fund the operation of the securities division and the general operations of the Auditor’s office. The special operating fund shall be appropriated by line item by the Legislature.

(c) Moneys payable for assessments established by §32-4-407a of this code shall be collected by the commissioner and deposited into the General Revenue Fund.

(d) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this chapter authorizes the commissioner or any of his or her officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of the chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-22E-1, §29-22E-2, §29-22E-3, §29-22E-4, §29-22E-5, §29-22E-6, §29-22E-7, §29-22E-8, §29-22E-9, §29-22E-10, §29-22E-11, §29-22E-12, §29-22E-13, §29-22E-14, §29-22E-15, §29-22E-16, §29-22E-17, §29-22E-18, §29-22E-19, §29-22E-20, §29-22E-21, §29-22E-22, §29-22E-23, and §29-22E-24, all relating to permitting interactive wagering authorized as West Virginia Lottery interactive wagering activities; providing legislative findings; defining terms; detailing duties and powers of the West Virginia Lottery Commission; providing rule-making authority and emergency rule-making authority; requiring commission to levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts and deposit them into the West Virginia Lottery Interactive Wagering Fund; limiting licensees who may offer interactive wagering to existing racetrack casinos and the casino in a historic resort hotel; providing for four types of licenses to be issued related to interactive wagering; establishing license requirements and prohibitions; authorizing licensing fees; requiring adoption and posting of house rules; defining duties of an operator conducting interactive wagering; requiring the posting of betting limits; authorizing interactive wagering agreements with other governments; providing powers and duties of commission and operators; limiting certain activities of employees; authorizing the West Virginia Lottery to levy and collect a
privilege tax in the amount of 15 percent of adjusted gross interactive wagering receipts; requiring reports and submission of taxes; clarifying that tax is in lieu of certain other taxes; providing that certain expenditures related to interactive wagering are facility modernization improvements eligible for recoupment; providing that credits are not allowed against the privilege tax; creating the West Virginia Lottery Interactive Wagering Fund; authorizing the West Virginia Lottery to collect an administrative allowance from gross interactive wagering receipts; providing for distribution of moneys deposited in the West Virginia Lottery Interactive Wagering Fund; authorizing certain agreements between the West Virginia Lottery and law enforcement; imposing civil penalties for certain violations, and exceptions thereto; prohibiting unauthorized interactive wagering in this state; establishing crimes related to unauthorized interactive wagering and imposing criminal penalties; establishing crimes related to authorized interactive wagering and imposing criminal penalties; preempting provisions from state and local law; and establishing certain exemptions from federal law.

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

**ARTICLE 22E. WEST VIRGINIA LOTTERY INTERACTIVE WAGERING ACT.**

§29-22E-1. Short title.

1 This article shall be known and may be cited as the West Virginia Lottery Interactive Wagering Act.

§29-22E-2. State authorization of interactive wagering at licensed racetrack facilities and historic resort hotel; legislative findings, and declarations.

1 (a) *Operation of West Virginia Lottery interactive wagering.* — Notwithstanding any provision of law to the contrary, the operation of interactive wagering and ancillary activities are only lawful when conducted in accordance
with the provisions of this article and rules of the
commission.

(b) Legislative findings. —

(1) The Legislature finds that the operation of the four
racetracks and the historic resort hotel in this state play a
critical role in the economy of this state, and such
constitutional lotteries are rightfully authorized as state
enterprises consistent with the rights and powers granted to
the states under the Tenth Amendment of the United States
Constitution. The federal government is a government of
limited and enumerated powers, and powers not delegated
to the United States by the Constitution nor prohibited by it
to the states are reserved for the states and its respective
citizens.

(2) The Legislature finds that section 36, article VI of
the Constitution of the State of West Virginia grants the
state the exclusive right to lawfully own and operate a
lottery in this state. Authorization of wagering on any
constitutional lottery within West Virginia is within the
state’s sovereign rights as a state to act in the best interest
of its citizens.

(3) The Legislature finds that it is in the best interests of
the State of West Virginia for the state to operate a lottery
in the form of interactive wagering and that it is the intent
of the Legislature to authorize interactive wagering within
the state and through compacts with other approved
jurisdictions.

(4) The Legislature finds that illegal interactive
wagering channels operating throughout the United States
pose a critical threat to the safety and welfare of the citizens
of West Virginia and that creating civil and criminal
penalties to prosecute illegal operators, while transferring
this black market demand into a secure and highly regulated
environment, will protect the public and positively benefit
state revenues and the state’s economy.
(5) The Legislature finds that the most effective and efficient manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to limit the number of authorized operators to those who are licensed, pursuant to the provisions of §29-22A-1 et seq. of this code, and to facilities licensed to operate video lottery terminals, pursuant to the provisions of §29-25-1 et seq. of this code.

(6) The Legislature finds that the granting of licenses pursuant to the provisions of this article, while maintaining all ownership rights and exercising control through strict regulation of all West Virginia Lottery interactive wagering authorized by the provisions of this article, constitutes an appropriate exercise by the Legislature of the power granted it by the provisions of section 36, article VI of the Constitution of the State of West Virginia.

(7) The Legislature finds that the operation of West Virginia Lottery interactive wagering at racetracks, licensed pursuant to the provisions of §29-22A-1 et seq. of this code, and at a historic resort hotel, licensed pursuant to the provisions of §29-25-1 et seq. of this code, serves to protect, preserve, promote, and enhance the tourism industry of the state as well as the general fiscal wellbeing of the state and its subdivisions.


For the purposes of this article, the following terms have the meanings ascribed to them in this section:

(1) “Adjusted gross interactive wagering receipts” means an operator’s gross interactive wagering receipts from West Virginia Lottery interactive wagering, less winnings paid to wagerers in such games.

(2) “Commission” or “State Lottery Commission” means the West Virginia Lottery Commission, created by §29-22-1 et seq. of this code.
(3) “Director” means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

(4) “Gaming” or “interactive gaming” means wagering on any authorized interactive game. Authorized interactive games are computerized or virtual versions of any game of chance or digital simulation thereof, including, but not limited to, casino themed slot simulations, table games, and other games approved by the commission.

(5) “Government” means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States Government.

(6) “Gross interactive wagering receipts” means the total gross receipts received by a licensed gaming facility from interactive wagering.

(7) “Interactive gaming operator” or “operator” means a licensed gaming facility which has elected to operate authorized West Virginia Lottery interactive wagering activities or an interactive gaming system on behalf of or in cooperation with an interactive gaming licensee.

(8) “Interactive gaming provider” or “management services provider” means an interactive gaming licensee or an interactive gaming operator with a valid permit acting on behalf of or in partnership with an interactive gaming licensee.

(9) “Interactive wagering account” means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for interactive wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

(10) “Interactive wagering agreement” means a written agreement between the commission and one or more other
governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments.

(11) “Interactive wagering fund” means the special fund in the State Treasury, created in §29-22E-17 of this code.

(12) “License” means any license, applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery interactive wagering at a licensed gaming facility (operator license or West Virginia Lottery interactive wagering license);

(B) A license to supply a gaming facility, licensed under this article, to operate interactive wagering with interactive wagering equipment or services necessary for the operation of interactive wagering (supplier license); or

(C) A license to be employed at a racetrack or gaming facility, licensed under this article, to operate West Virginia Lottery interactive wagering when the employee works in a designated gaming area that has interactive wagering or performs duties in furtherance of or associated with the operation of interactive wagering at the licensed gaming facility (occupational license).

(13) “Licensed gaming facility” or “gaming facility” means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 et seq. of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 et seq. of this code, licensed under this article, to conduct West Virginia Lottery interactive wagering.

(14) “Lottery” means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by
general law, as provided in this article, and in §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code.

(15) “National criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation, based on fingerprint identification or any other method of positive identification.

(16) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

(17) “West Virginia Lottery interactive wagering” or “interactive wagering” or “interactive gaming” means the placing of wagers remotely and in real time on any authorized interactive game with any interactive gaming provider, using any communications technology, by means of any electronic or mobile device or other interface capable of providing a means of input and output. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races, authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery, authorized by §29-22-1 et seq. of this code;

(C) Racetrack video lottery, authorized by §29-22A-1 et seq. of this code;

(D) Limited video lottery, authorized by §29-22B-1 et seq. of this code;

(E) Racetrack table games, authorized by §29-22C-1 et seq. of this code;

(F) Video lottery and table games, authorized by §29-25-1 et seq. of this code;
(G) Sports wagering, authorized by §29-22D-1 et seq.; and

(H) Daily Fantasy Sports (DFS).

(18) “West Virginia Lottery interactive wagering license” means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 et seq. or §29-25-1 et seq. of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery interactive wagering on the grounds where video lottery is conducted by the licensee or through any other authorized interactive platform developed by the gaming facility. This term is synonymous with “operator’s license.”


(a) In addition to the duties set forth elsewhere in this article, and in §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code, the commission shall have the authority to regulate interactive wagering and the conduct of interactive gaming.

(b) The commission shall examine the regulations implemented in other states where interactive wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework through promulgation of rules.

(c) The commission has the authority, pursuant to §29A-1-1 et seq. and §29A-3-1 et seq. of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article. Rules proposed by the commission before July 1, 2020, may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

(1) Rules promulgated by the commission may include, but are not limited to, those governing the acceptance of
wagers on interactive games; maximum wagers which may be accepted by an operator from any one patron on any one interactive game; method of accounting to be used by operators; types of records which shall be kept; use of credit and checks by patrons; type of system for wagering; protections for patrons placing wagers; and promotion of social responsibility, responsible gaming, and inclusion of the statement, “If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER”, in every designated area approved for interactive wagering and on any mobile application or other digital platform used to place wagers.

(2) The commission shall establish minimum internal control standards (MICS) and approve minimum internal control standards proposed by licensed operators for administration of interactive wagering operations, interactive wagering equipment and systems, or other items used to conduct interactive wagering, as well as maintenance of financial records and other required records.

(d) The commission shall determine the eligibility of a person to hold or continue to hold a license, shall issue all licenses, and shall maintain a record of all licenses issued under this article. The commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses prior to promulgation of emergency rules upon the effective date of this article.

(e) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts imposed by this article, and deposit all moneys into the interactive wagering fund, except as otherwise provided under this article.

(f) The commission may sue to enforce any provision of this article or any rule of the commission by civil action or petition for injunctive relief.
(g) The commission may hold hearings, administer oaths, and issue subpoenas or subpoenas duces tecum: Provided, That all hearings shall be conducted pursuant to the provisions of the State Administrative Procedures Act, §29A-2-1 et seq. of this code and the Lottery Administrative Appeal Procedures, W.Va. CSR §179-2-1 et seq.

(h) The commission may exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

§29-22E-5. Licenses required.

(a) No person may engage in any activity in connection with West Virginia Lottery interactive wagering in this state unless all necessary licenses have been obtained in accordance with this article and rules of the commission.

(b) The commission may not grant a license until it determines that each person who has control of the applicant meets all qualifications for licensure. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation; this does not include any bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business;

(2) Each person associated with a noncorporate applicant who directly or indirectly holds a beneficial or proprietary interest in the applicant’s business operation, or who the commission otherwise determines has the ability to control the applicant; and

(3) Key personnel of an applicant, including any executive, employee, or agent, having the power to exercise
significant influence over decisions concerning any part of the applicant’s business operation.

(c) License application requirements. — All applicants for any license issued under this article shall submit an application to the commission in the form the commission requires and submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require additional background checks on licensees when they apply for annual license renewal, and any applicant convicted of any disqualifying offense shall not be licensed.

(d) Each interactive wagering licensee, licensed supplier, or a licensed management services provider shall display the license conspicuously in its place of business or have the license available for inspection by any agent of the commission or any law-enforcement agency.

(e) Each holder of an occupational license shall carry the license and have some indicia of licensure prominently displayed on his or her person when present in a licensed gaming facility at all times, in accordance with the rules of the commission.

(f) Each person licensed under this article shall give the commission written notice within 30 days of any change to any information provided in the licensee’s application for a license or renewal.

(g) No commission employee may be an applicant for any license issued under this article nor may any employee of any such licensee directly or indirectly hold an ownership or a financial interest in any West Virginia Lottery interactive wagering license.
§29-22E-6. Operator license; West Virginia interactive wagering operators.

(a) In addition to the casino games permitted pursuant to the provisions of §29-22A-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code, a licensed gaming facility may operate West Virginia Lottery interactive wagering upon the approval of the commission, and the commission shall have the general responsibility for the implementation of this article and all other duties specified in §29-22-1 et seq., §29-22A-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code, the provisions of this article, and applicable rules.

(b) All interactive wagering authorized by this article shall be West Virginia Lottery games owned by the State of West Virginia. An operator license granted by the commission pursuant to this article grants licensees lawful authority to conduct West Virginia Lottery interactive wagering within the terms and conditions of the license and any rules promulgated under this article.

(c) Interactive wagering licenses. — The commission may issue up to five licenses to operate West Virginia Lottery interactive wagering in accordance with the provisions of this article. No more than five licenses to operate a gaming facility with West Virginia Lottery interactive wagering shall be permitted in this state.

(d) Grant of license. — Upon application by a gaming facility and payment of a $250,000 application fee, the commission shall immediately grant a West Virginia Lottery interactive wagering license to an operator that provides for the right to conduct West Virginia Lottery interactive wagering: Provided, That the applicant must hold a valid racetrack video lottery license issued by the commission, pursuant to §29-22A-1 et seq. of this code, or a valid license to operate a gaming facility, issued by the commission pursuant to §29-25-1 et seq. of this code, and otherwise meet the requirements for licensure under the
provisions of this article and the rules of the commission. This license shall be issued for a five-year period, and may be renewed for five-year periods upon payment of a $100,000 renewal fee, as long as an operator continues to meet all qualification requirements.

(e) Location. — A West Virginia Lottery interactive wagering license authorizes the operation of West Virginia Lottery interactive wagering at approved locations and through any mobile application or other digital platforms approved by the commission.

(f) Management service contracts. —

(1) Approval. — A West Virginia Lottery interactive wagering licensee may not enter into any management services contract that would permit any person other than the licensee to act as the commission’s agent in operating West Virginia Lottery interactive wagering unless the management service contract: (A) Is with a person licensed under this article to provide management services; (B) is in writing; and (C) has been approved by the commission.

(2) Material change. — The West Virginia Lottery interactive wagering licensee shall submit any material change in a management services contract, previously approved by the commission, to the commission for its approval or rejection before the material change may take effect.

(3) Other commission approvals and licenses. — The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted, or transferred to a third party without the prior approval of the commission. Third parties must be licensed as a management services provider under this article before providing services.

(g) Expiration date and renewal. —
68 (1) A licensed operator shall submit to the commission such documentation or information as the commission may require demonstrating to the satisfaction of the director that the licensee continues to meet the requirements of the law and rules. Required documentation or information shall be submitted no later than five years after issuance of an operator license and every five years thereafter, or within lesser periods based on circumstances specified by the commission.

77 (2) If the licensee fails to apply to renew its license issued pursuant to §29-22A-1 et seq. or §29-25-1 et seq. of this code prior to expiration, the commission shall renew its license under this article at the time the expired license is renewed as long as the licensee was operating in compliance with applicable requirements in the preceding license year.

(h) Surety bond. — A West Virginia Lottery interactive wagering licensee shall execute a surety bond in an amount and in the form approved by the commission, to be given to the state, to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission.

(i) Audits. — Upon application for a license and annually thereafter, a West Virginia Lottery interactive wagering licensee shall submit to the commission an annual audit of the financial transactions and condition of the licensee’s total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and applicable federal and state laws.

(j) Commission office space. — A West Virginia Lottery interactive wagering licensee shall provide suitable office space at the interactive wagering facility, at no cost, for the commission to perform the duties required of it by this article and the rules of the commission.

(k) Facility qualifications. — A West Virginia Lottery interactive wagering licensee shall demonstrate that its
gaming facility with West Virginia Lottery interactive wagering will: (1) Be accessible to disabled individuals, in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state, and local laws; and (3) meet any other qualifications specified in rules adopted by the commission. Notwithstanding any provision of this code or any rules promulgated by the Alcohol Beverage Control Commissioner to the contrary, vacation of the premises after service of beverages ceases is not required for any licensed gaming facility.

§29-22E-7. Management services providers; license requirements.

(a) License. — The holder of a license to operate West Virginia Lottery interactive wagering may contract with an entity to conduct that operation in accordance with the rules of the commission. That entity shall obtain a license as a management services provider prior to the execution of any such contract, and such license shall be issued pursuant to the provisions of this article and any rules promulgated by the commission.

(b) License qualifications and fee. — Each applicant for a management services provider license shall meet all requirements for licensure and pay a nonrefundable license and application fee of $100,000. The commission may adopt rules establishing additional requirements for an authorized management services provider. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets authorized management services provider licensing requirements.

(c) Renewal. — Management services provider licenses shall be renewed annually to any licensee who continues to be in compliance with all requirements and who pays the annual renewal fee of $100,000.
(d) Any entity or individual who shares in revenue, including any affiliate operating under a revenue share agreement, shall be licensed under this section.

§29-22E-8. Suppliers; license requirements.

(a) Supplier license. —

1. (1) The commission may issue a supplier license to a person to sell or lease interactive wagering equipment, systems, or other gaming items necessary to conduct interactive wagering, and offer services related to such equipment or other gaming items to a West Virginia Lottery interactive wagering licensee while the license is active. The commission may establish the conditions under which the commission may issue provisional licenses, pending completion of final action on an application.

2. (2) The commission may adopt rules establishing additional requirements for a West Virginia Lottery interactive wagering supplier and any system or other equipment utilized for wagering. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets West Virginia Lottery interactive wagering supplier licensing requirements.

(b) Supplier specifications. — An applicant for a supplier license shall demonstrate that the equipment, system, or services that the applicant plans to offer to the interactive wagering licensee conform to standards established by the commission and applicable state law. The commission may accept approval by another jurisdiction, that it specifically determines have similar equipment standards, as evidence the applicant meets the standards established by the commission and applicable state law.

(c) License application and renewal fees. — Applicants shall pay to the commission a nonrefundable license and application fee in the amount of $10,000. After the initial one-year term, the commission shall renew supplier licenses
annually thereafter. Renewal of a supplier license will be
granted to any renewal applicant who has continued to
comply with all applicable statutory and regulatory
requirements, upon submission of the commission issued
renewal form and payment of a $10,000 renewal fee.

(d) Inventory. — A licensed interactive wagering
supplier shall submit to the commission a list of all
interactive wagering equipment and services sold, delivered
to, or offered to a West Virginia Lottery interactive
wagering licensee in this state, as required by the
commission, all of which must be tested and approved by
an independent testing laboratory approved by the
commission. An interactive wagering licensee may continue
to use supplies acquired from a licensed interactive
wagering supplier, even if a supplier’s license expires or is
otherwise cancelled, unless the commission finds a defect in
the supplies.


(a) All persons employed to be engaged directly in
interactive wagering-related activities, or otherwise
cconducting or operating interactive wagering, shall be
licensed by the commission and maintain a valid
occupational license at all times and the commission shall
issue such license to be employed in the operation of
interactive wagering to a person who meets the
requirements of this section.

(b) An occupational license to be employed by a gaming
facility with West Virginia Lottery interactive wagering
permits the licensee to be employed in the capacity
designated by the commission while the license is still
active. The commission may establish, by rule, job
classifications with different requirements to recognize the
extent to which a particular job has the ability to impact the
proper operation of West Virginia Lottery interactive
wagering.
(c) Application and fee. — Applicants shall submit any required application forms established by the commission and pay a nonrefundable application fee of $100. The fee may be paid on behalf of an applicant by the employer.

(d) Renewal fee and form. — Each licensed employee shall pay to the commission an annual license fee of $100 by June 30 of each year. The fee may be paid on behalf of the licensed employee by the employer. In addition to a renewal fee, each licensed employee shall annually submit a renewal application on the form required by the commission.

§29-22E-10. License prohibitions.

(a) The commission may not grant any license, pursuant to the provisions of this article, if evidence satisfactory to the commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any governmental authority responsible for regulation of gaming activities;

(3) Has been convicted of a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order; or

(4) Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black market wagers from individuals located in the United States.

(b) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:
(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee’s voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee’s assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for an interactive wagering license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if an applicant has not met the requirements of this section or any other provision of this article.


(a) Each operator shall adopt comprehensive house rules for game play governing interactive wagering transactions with its patrons. These comprehensive rules will be published as part of the minimum internal control standards. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. House rules shall be approved by the commission prior to implementation.

(b) The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed and included in the terms and conditions of the interactive wagering system. Copies shall be made readily available to patrons.
(c) The commission shall license and require the display of West Virginia Lottery game logos on interactive wagering platforms and any locations the commission considers appropriate.

§29-22E-12. Operator duties; interactive wagering operations at a licensed gaming facility.

(a) General. — All operators licensed under this article to conduct West Virginia Lottery interactive wagering shall:

1. Employ an interactive gaming system and interactive gaming platform which manages, conducts, and records interactive games and the wagers associated with interactive games, as well as any interactive gaming platforms authorized by the commission. System requirements and specifications shall be developed according to industry standards and implemented by the commission as part of the minimum internal control standards;

2. Promptly report to the commission any facts or circumstances related to the operation of a West Virginia Lottery interactive wagering licensee which constitute a violation of state or federal law and immediately report any suspicious betting over a threshold set by the operator that has been approved by the commission to the appropriate state or federal authorities;

3. Conduct all interactive wagering activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state and does not adversely affect the security or integrity of the West Virginia Lottery;

4. Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a licensee, the commission, the state, or employees thereof, arising from the licensee’s actions or omission while acting as an agent of the
commission operating West Virginia Lottery interactive wagering pursuant to this article;

(5) Assist the commission in maximizing interactive wagering revenues; and

(6) Keep current in all payments and obligations to the commission.

(b) Duties. — All West Virginia Lottery interactive wagering licensees shall:

(1) Acquire West Virginia Lottery interactive wagering equipment by purchase, lease, or other assignment and provide a secure location for the placement, operation, and play of interactive wagering gaming equipment;

(2) Prevent any person from tampering with or interfering with the operation of any West Virginia Lottery interactive wagering;

(3) Ensure that West Virginia Lottery interactive wagering conducted at a gaming facility is within the sight and control of designated employees of the licensee and such wagering at the facility or otherwise available by the licensee is conducted under continuous observation by security equipment in conformity with specifications and requirements of the commission;

(4) Ensure that West Virginia Lottery interactive wagering occurs only in the specific locations within designated gaming areas approved by the commission or using a commission approved mobile application or other digital platform that utilizes communications technology to accept wagers originating within this state, or on an interactive wagering device. West Virginia Lottery interactive wagering shall only be relocated or offered in additional authorized manners in accordance with the rules of the commission;
(5) Maintain sufficient cash and other supplies to conduct interactive wagering at all times; and

(6) Maintain daily records showing the gross interactive wagering receipts and adjusted gross interactive wagering receipts of the licensee from West Virginia Lottery interactive wagering and shall timely file with the commission any additional reports required by rule or by other provisions of this code.


An interactive wagering licensee shall conspicuously post a sign at each West Virginia Lottery interactive wagering location and on all interactive gaming platforms indicating the minimum and maximum wagers permitted at that location and shall comply with the same.


(a) On behalf of the State of West Virginia, the commission is authorized to:

(1) Enter into interactive wagering agreements with other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments; and

(2) Take all necessary actions to ensure that any interactive wagering agreement entered into, pursuant to this section, becomes effective.

(b) The rules adopted by the commission pursuant to this section may include provisions prescribing:

(1) The form, length, and terms of an agreement entered into by the commission and another government, including, but not limited to, provisions relating to how: Taxes are to be treated by this state and another government; revenues
are to be shared and distributed; and disputes with patrons are to be resolved;

(2) The information to be furnished to the commission by a government that proposes to enter into an agreement with this state pursuant to this section;

(3) The information to be furnished to the commission to enable the commission and director to carry out the purposes of this section;

(4) The manner and procedure for hearings conducted by the commission pursuant to this section, including any special rules or notices; and

(5) The information required to be furnished to the commission to support any recommendations made to the commission, pursuant to this section.

(c) The commission may not enter into any interactive wagering agreement, pursuant to this section, unless the agreement includes provisions that:

(1) Account for the sharing of revenues by this state and another government;

(2) Permit the effective regulation of interactive wagering by this state, including provisions relating to licensing of persons, technical standards, resolution of disputes by patrons, requirements for bankrolls, enforcement, accounting, and maintenance of records;

(3) Require each government that is a signatory to the agreement to prohibit operators of interactive wagering, management or other service providers, or suppliers, manufacturers or distributors of interactive wagering systems from engaging in any activity permitted by the interactive wagering agreement unless they are licensed in this state or in a signatory jurisdiction with similar requirements approved by the commission;
(4) No variation from the requirements of the interactive wagering agreement is permitted for any signatory government without a lack of opposition by this state and all signatory governments;

(5) Prohibit any subordinate or side agreements among any subset of governments that are signatories to the agreement unless it relates exclusively to the sharing of revenues; and

(6) Require the government to establish and maintain regulatory requirements governing interactive wagering that are consistent with the requirements of this state in all material respects if the interactive wagering agreement allows persons physically located in this state to participate in interactive wagering conducted by another government or an operator licensed by another government.

§29-22E-15. Authorization of interactive wagering in this state; requirements.

(a) An operator shall accept wagers on interactive games authorized under this article from persons physically present in a licensed gaming facility where authorized interactive wagering occurs. A person placing a wager shall be at least 21 years of age.

(b) An operator may accept wagers from an individual physically located within this state using a mobile or other digital platform or an interactive wagering device, approved by the commission, through the patron’s interactive wagering account. A person placing a wager shall be at least 21 years of age.

(c) An operator may accept wagers from an individual physically located in a state or jurisdiction with which the commission has entered into an interactive wagering agreement using a mobile or other digital platform or an interactive wagering device through the patron’s interactive wagering account, so long as the device or platform is
approved by the commission and all other requirements of
the agreement are satisfied.

(d) The commission or operator may ban any person
from entering a gaming area of a gaming facility
conducting interactive wagering or the grounds of a
gaming facility licensed under this article or from
participating in the play or operation of any West
Virginia Lottery interactive wagering. A log of all
excluded players shall be kept by the commission and
each licensee, and no player on the commission’s
exclusion list or the licensed operator’s exclusion list
shall wager on any West Virginia Lottery interactive
wagering under this article.

(e) The commission shall promulgate rules
implementing the provisions of §29-22E-15(a) and §29-
22E-15(b) of this code by interpretive rule and minimum
internal control standards.

(f) The commission shall conduct all interactive
wagering pursuant to the provisions of this article, and such
gaming activities shall be deemed to occur at the licensed
gaming facilities authorized to conduct interactive
wagering.

(g) No licensed gaming facility employee may place a
wager on any interactive wagering at the employer’s facility
or through any other mobile application or digital platform
of their employer.

(h) No commission employee may knowingly wager
or be paid any prize from any wager placed at any
licensed gaming facility with West Virginia Lottery
interactive wagering within this state or at any facility
outside this jurisdiction that is directly or indirectly
owned or operated by a West Virginia interactive
wagering licensee.
§29-22E-16. Interactive wagering revenues; accounting for the state’s share of revenue imposed for the privilege of offering West Virginia Lottery interactive wagering; limitation of other taxes; recoupment for improvements.

(a) *Imposition and rate of assessment.* — For the privilege of holding a license to operate interactive wagering under this article, the state shall impose and collect 15 percent of the licensee’s adjusted gross interactive wagering receipts from the operation of West Virginia Lottery interactive wagering (hereinafter “privilege tax” or “tax”). The accrual method of accounting shall be used for purposes of calculating the amount of the tax owed by the licensee.

(b) *Operator revenue reports and payment of privilege tax.* —

(1) The tax levied and collected pursuant to §29-22E-16(a) of this code is due and payable to the commission in weekly installments on or before the Wednesday following the calendar week in which the adjusted gross interactive wagering receipts were received and the tax obligation was accrued.

(2) The licensed operator shall complete and submit the return for the preceding week by electronic communication to the commission, on or before Wednesday of each week, in the form prescribed by the commission that provides:

(A) The total gross interactive wagering receipts and adjusted gross interactive wagering receipts from operation of West Virginia Lottery interactive wagering during that week;

(B) The tax amount for which the interactive wagering licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax on adjusted gross interactive wagering receipts required by the commission.
(3) The tax amount shown to be due shall be remitted by electronic funds transfer simultaneously with the filing of the return. All moneys received by the commission pursuant to this section shall be deposited in the interactive wagering fund in accordance with the provisions of this article.

(c) Privilege tax obligation imposed by this section is in lieu of other taxes. — With the exception of the ad valorem property tax collected under chapter 11A of this code, the privilege tax on adjusted gross interactive wagering receipts imposed by this section is in lieu of all other state and local taxes and fees imposed on the operation of, or the proceeds from operation of, West Virginia Lottery interactive wagering, except as otherwise provided in this section. The consumers sales and services tax imposed pursuant to §11-15-1 et seq. of this code, the use tax imposed by §11-15A-1 et seq. of this code and any similar local tax imposed at the municipal or county level, shall not apply to the licensee’s gross receipts from any West Virginia Lottery interactive wagering or to the licensee’s purchase of interactive wagering equipment, supplies, or services directly used in operation of the interactive wagering authorized by this article.

(d) Acquisition of any system or wagering equipment and other items related to the operation of West Virginia interactive wagering shall be considered “facility modernization improvements” eligible for recoupment as defined in §29-22A-10(b)(2) and §29-25-22(c) of this code.

(e) Prohibition on credits. — Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the privilege tax obligation imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment or for any investment in or improvement to real property that is used in the operation of West Virginia Lottery interactive wagering.
§29-22E-17. West Virginia Lottery Interactive Wagering Fund; distribution of funds.

(a) The special fund in the State Treasury known as the West Virginia Lottery Interactive Wagering Fund is hereby created and all moneys collected under this article by the commission shall be deposited with the State Treasurer to the West Virginia Lottery Interactive Wagering Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund. All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the interactive wagering fund pursuant to §29-22E-17(b) of this code.

(b) The commission shall deduct an amount sufficient to reimburse its actual costs and expenses incurred in administering interactive wagering at licensed gaming facilities from the gross deposits into the interactive wagering fund. The amount remaining after the deduction for administrative expenses is the net profit.

(1) Administrative allowance. — The commission shall retain up to 15 percent of gross deposits for the fund operation and its administrative expenses: Provided, That in the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate but may not exceed $250,000. On a monthly basis, the director shall report any surplus in excess of $250,000 to the Joint Committee on Government and Finance and remit the entire amount of those surplus funds in excess of $250,000 to the State Treasurer which shall be allocated as net profit.

(2) Distribution to pension plan for racing association employees. — In each fiscal year, the Lottery Commission shall deposit one-quarter of a percent of the net profit into each of the four special funds established by the Racing Commission, pursuant to §29-22A-10 and §29-22C-27 of this code, to be used for payment into the pension plan for
§29-22E-18. Law enforcement.

Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to interactive wagering, as such occurs at facilities of the type authorized by this article, that are necessary to enforce the provisions of this article that are not subject to federal jurisdiction: Provided, That the State Police shall only have exclusive jurisdiction over offenses committed on the grounds of a licensed gaming facility that are offenses relating to interactive wagering.


(a) The commission may impose, on any person who violates the provisions of this article, a civil penalty not to exceed $50,000 for each violation. Such penalty shall be imposed on all individuals and is not limited to individuals licensed under this article.

(b) The provisions of §29A-5-1 et seq. of this code apply to any civil penalty imposed pursuant to the provisions of this section.


(a) Any person, other than a licensee under this article, who engages in accepting, facilitating, or operating an interactive wagering operation is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than

(a) Any person convicted of a violation of §29-22E-20 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or confined in jail for not more than 90 days, or both fined and confined.

(b) Notwithstanding the penalty provisions of §29-22E-20(a) of this code, any person convicted of a second violation of §29-22E-20(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $50,000, or confined in jail for not more than six months, or both fined and confined.

(c) Notwithstanding the penalty provisions of §29-22E-20(a) or §29-22E-20(b) of this code, any person convicted of a third or subsequent violation of §29-22E-20(a) of this code is guilty of a felony, and upon conviction thereof, shall be fined not less than $25,000 nor more than $100,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and confined.


(a) An interactive wagering licensee is guilty of unlawful operation and is guilty of a misdemeanor when:

(1) The licensee operates West Virginia Lottery interactive wagering without authority of the commission to do so;

(2) The licensee operates West Virginia Lottery interactive wagering in any location or by any manner that is not approved by the commission;

(3) The licensee knowingly conducts, carries on, operates, or allows any interactive wagering to occur on premises or through any other device if equipment or material has been tampered with, or exposed to conditions in which it will be operated in a manner designed to deceive the public;
(4) The licensee employs an individual who does not hold a valid occupational license in a position for which a license is required or otherwise allows an individual to perform duties for which such license is required or continues to employ an individual after the employee’s occupational license is no longer valid;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in West Virginia Lottery interactive wagering;

(6) The licensee knowingly permits an individual under the age of 21 to enter or remain in a designated gaming area or to engage in interactive wagering; or

(7) The licensee exchanges tokens, chips, electronic media, or other forms of credit used for wagering for anything of value except money or credits applied to an interactive wagering account at a gaming facility or through a digital or electronic platform authorized under this article.

(b) A person is guilty of a felony when:

(1) A person changes or alters the normal outcome of any game played on a mobile or other digital platform, including any interactive gaming system used to monitor the same or the way in which the outcome is reported to any participant in the game;

(2) The person manufactures, sells, or distributes any device that is intended by that person to be used to violate any provision of this article or the interactive wagering laws of any other state;

(3) The person claims, collects, or takes anything of value from a gaming facility offering West Virginia Lottery interactive wagering with intent to defraud or attempts such action without having made a wager in which such amount or value is legitimately won or owed;
(4) The person knowingly places a wager using counterfeit currency or other counterfeit form of credit for wagering at a gaming facility or through a digital or electronic platform offering West Virginia Lottery interactive wagering; or

(5) The person, not a licensed gaming facility under this article or an employee or agent of a gaming facility licensed under this article acting in furtherance of the licensee’s interest, has in his or her possession on grounds owned by the gaming facility licensed under this article or on grounds contiguous to the licensed gaming facility, any device intended to be used to violate a provision of this article or any rule of the commission.

(c) Any person who violates any provision of §29-22E-21(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than six months, or both fined and confined, except any violation that is not committed by a natural person may result in a fine of not more than $25,000.

(d) Any person who violates any provision of §29-22E-21(b) of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or confined in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

(e) With regard to §29-22E-21(b) of this code, each West Virginia interactive wagering licensee shall post notice of the prohibitions and penalties of this section in a manner determined by the rules of the commission.


No local law or rule providing any penalty, disability, restriction, regulation, or prohibition for operating a gaming facility with West Virginia Lottery interactive wagering or supplying a licensed gaming facility may be enacted, and
the provisions of this article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict with this article.

§29-22E-23. Exemption from federal law.

Pursuant to Section 2 of Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.


All shipments of gambling devices including any interactive wagering devices or related materials to licensed gaming facilities in this state are legal shipments of gambling devices into the State of West Virginia, as long as the registering, recording, and labeling of which have been completed by the supplier thereof in accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.

CHAPTER 129

(H. B. 2958 - By Delegates Maynard, Westfall, Jennings, Pack, Paynter, Miller, Lovejoy, Linville, J. Jeffries and Angelucci)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-15-7a relating to authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies; authorizing the Auditor to establish a schedule of examinations; and defining the scope of the Auditor’s examinations.
Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-7a. Audit or financial examination of volunteer fire companies.

The Auditor shall have the authority and the duty to make a regular review of the finances of each volunteer fire company constituted under the provisions of this article. Audits or financial examinations are not required to be conducted on an annual basis, but shall be scheduled as to complete a review of each volunteer fire company at least once every five years: Provided, That nothing in this section shall prevent the Auditor from conducting more than one financial examination or audit of a volunteer fire company within the five-year period if the Auditor has cause to believe that loss, mismanagement, misuse, or waste of the funds of the company that may occur or is occurring. The scope of the Auditor’s examination or audit shall include all income of the voluntary fire company, regardless of the source of funds, the assets, liabilities, and all expenditures of the company: Provided, however, That the State Auditor shall implement internal policies to ensure that any costs associated with an audit under this section of the code may be carried by the State Auditor or may be recouped by the volunteer fire company.
CHAPTER 130

(Com. Sub. for H. B. 3016 - By Delegates Butler and Porterfield)

[By Request of the Department of Transportation]

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to repeal §29-2A-9, §29-2A-17, §29-2A-18, §29-2A-19, §29-2A-21, §29-2A-22, §29-2A-23, §29-2A-24, §29-2A-25, §29-2A-26, §29-2A-27 and §29-2A-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-11, §29-2A-14 and §29-2A-20 of said code, all relating to the State Aeronautics Commission; repealing provisions relating to state airways systems, investigations, inquiries and hearings, disposition of fees, joint hearings, cooperation with and reports to agencies of state the United States, the use of state and municipal facilities and services, commission orders, notices and opportunity for hearings, judicial review of commission actions, criminal penalties and exchange of information for violations of provisions of article, severability, repeal of inconsistent provisions, and short title; removing antiquated and inoperable provisions modifying and deleting definitions; continuing the State Aeronautics Commission; modifying and updating membership requirements, powers, and duties of the commission; setting forth quorum and meeting requirements; providing for the organization and operation of the commission; modifying provisions related to the director of the commission; updating provisions related to funding and federal aid; continuing general powers related to planning, establishing, constructing, maintaining, and operating of airports; removing requirement
for delivery of abstract of conviction to commission; and clarifying authority to require presentment of certificate, permit, rating or license and to enforce aeronautics laws.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. STATE AERONAUTICS COMMISSION.


1 As used in the statutes of West Virginia, unless the context otherwise requires:

2 "Aeronautics" means the art and science of flight, including, but not limited to, transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and education about aeronautics.

3 "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

4 "Air navigation" or "navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport within this state.

5 "Air navigation facility" means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.
“Airport” means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

“Commission” means the West Virginia State Aeronautics Commission.

“Director” means the director of the Commission.

“Municipality” means any county, city, town, village, or other political subdivision of this state. “Municipal” means pertaining to a municipality as herein defined.

“Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft in the airspace over this state or upon the ground within this state.

“Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

§29-2A-2. Short title; continuation of commission; membership and compensation; quorum.

(a) This article may be cited as the “State Aeronautics Commission Act”.

(b) The West Virginia State Aeronautics Commission is hereby continued. The current members shall retain their seats until the expiration of their terms and may be reappointed. The commission consists of five members appointed by the Governor, by and with the advice and consent of the Senate. One member shall be the Secretary of Transportation ex officio, whose term shall continue for the period that he or she holds the office of Secretary of Transportation. The other four members of the commission are initially appointed by the Governor, one to serve for a
term of one year, one to serve for a term of two years, one
to serve for a term of three years, and one to serve for a term
of four years. The successors of the members initially
appointed as provided herein shall be appointed for terms of
four years each in the same manner as the members
originally appointed under this section, except that any
person appointed to fill a vacancy occurring prior to the
expiration of the term for which his or her predecessor was
appointed shall be appointed only for the remainder of such
term. Each member shall serve until the appointment and
qualification of his or her successor. No more than three
members of the commission shall be members of the same
political party. All members of the commission shall be
citizens and residents of this state. The members of the
commission who are appointed by the Governor as provided
by this section shall be selected with due regard to their
fitness by reason of their aeronautical, legal, administrative,
or management knowledge. In making such appointments,
the Governor shall, so far as may be possible and
practicable, select the several members from different
geographical sections of the state.

(c) No member may receive any salary for his or her
services, but each shall be reimbursed for actual and
necessary expenses incurred by such member in the
performance of his or her duties in accordance with state
travel rules.

(d) Three members are a quorum, and a quorum is
necessary to conduct business. Members may participate in
any meeting by phone.


The commission may enter into any contracts necessary
to the execution of the powers granted to it by this article. It
is empowered and directed to encourage, foster, and assist
in the development of aeronautics in this state and to
encourage the establishment of airports and air navigation
facilities. It shall cooperate with and assist the federal
government, the municipalities of this state, and other persons in the development of aeronautics and shall act to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the commission in the development of aeronautics and aeronautics facilities in this state. The commission is hereby given the power and authority to make such rules, policies, and guidelines as it may deem necessary and advisable for the public safety, governing the designing, laying out, locating, building, equipping and operating of all airports and the conduct of all other phases of aeronautics to effectuate the requirements of this article.

(1) The commission shall keep on file with the Secretary of State, and at the principal office of the commission, a copy of its rules and orders having general effect for public inspection. It shall provide for the publication and general distribution of all its orders, rules, and other information of public interest. Copies of any such orders, rules, and other information shall be made available electronically and provided to any person interested, free of charge, upon request. The publication and distribution of any such order or rule proposed for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code shall be sufficient notice to the public of the provisions, requirements, and effect thereof.

(2) Except where otherwise prohibited, the commission is authorized to permit the West Virginia Board of Treasury Investments or the West Virginia Investment Management Board to invest, as provided by this code, any funds received by the commission pursuant to the provisions of this code.

§29-2A-4. Organization of commission; meetings; reports; offices.

(a) The commission shall make, and may from time to time amend, rules for the administration of the powers granted to it by this article. The commission shall organize by electing from among its members a chairperson who shall serve as such for a period of two years. The
chairperson is authorized to sign documents, execute contracts, and otherwise act for and in the name of the commission in all matters within the lawful powers of the commission and authorized by a majority of its members.

(b) The commission shall determine the number, date, and place of its regular meetings, but at least one meeting shall be held annually at the commission’s established offices in the city of Charleston. Whenever the convenience of the public or of interested persons may be promoted, or delay or expense may be prevented, the commission may hold meetings at any other place designated by it.

(c) The commission shall report in writing to the Governor on or before August 31 of each year. The report shall contain a summary of the commission’s proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue received, and all expenditures made by or on behalf of the commission, such other information which may be necessary or useful, and any additional information which may be requested by the Governor. The fiscal year of the commission shall conform to the fiscal year of the state.

(d) An office shall be established and maintained by the commission in the city of Charleston.

§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; staff.

(a) A director of aeronautics shall be appointed by the commission, with the advice and consent of the Secretary of Transportation, who shall serve for an indefinite term at the pleasure of the commission. The director shall be appointed with due regard to his or her fitness as an administrator. The director shall devote his or her time to the duties of his or her office as required and prescribed by this article and may not have any pecuniary interest in, or any stock in, or bonds of, any civil aeronautical enterprise. The Secretary of Transportation, in consultation with the commission, shall
determine the director’s compensation. The compensation shall conform in general to the compensation received by persons occupying positions of similar importance and responsibility with other agencies of this state. The director’s compensation may not be paid, in whole or in part, from grant funds received by the commission. The director shall be reimbursed for all traveling and other expenses incurred by him or her in the discharge of his or her official duties in accordance with state travel rules. The director shall be the executive officer of the commission and under its supervision shall administer the provisions of this article and the rules and orders established thereunder and all applicable laws of the state. The director shall attend, but not vote, at all meetings of the commission. The director serves as the secretary of the commission and is in charge of its offices and responsible to the commission for the preparation of reports and the collection and dissemination of data and other public information relating to aeronautics.

At the direction of the commission, the director is authorized to execute contracts entered into by the commission which are legally authorized and for which funds are provided in any state or federal appropriations act.

(b) The commission may, by written order filed in its office, delegate to the director any of the powers or duties vested or imposed upon it by this article. Any delegated powers and duties may be exercised by the director in the name of the commission. The commission may also employ any necessary administrative, engineering, technical, and clerical staff.


The commission, out of any appropriation made to it by the Legislature or out of any funds at its disposal, may make funds available by grant or otherwise to counties, municipalities, and regional airport authorities, created under the provisions of chapter eight of this code, for the planning, acquisition, construction, improvement,
maintenance, or operation of airports owned or operated or to be owned or operated by such counties, municipalities, or regional airport authorities. Acceptance of any moneys so made available to any such county, municipality, or regional airport authority, shall constitute consent by the recipient that a reasonable use of the airport may be made, upon request of the commission, by the United States government, the state, or any of their respective agencies, including the State Aeronautics Commission and the National Guard of West Virginia for state purposes related or incidental to aeronautics.


(a) The commission is authorized to accept federal aid either outright or by way of matching funds, in whole or in part, as may be required by the federal government. When matching funds are available to the commission, they may be used in compliance with the provisions of the laws and regulations of the United States for the expenditure of federal moneys for airports and other air navigation facilities.

(b) The commission is authorized to accept and receive federal moneys and other moneys, either public or private, for and on behalf of this state, or any municipality thereof, for the planning, acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities. The funds may be expended regardless of whether the work is to be done by the state or a municipality, or jointly. If the funds are from the United States, they shall be expended upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder. The commission is hereby designated as the agency of the state, and is authorized to and may act as agent of any municipality of this state upon the request of such municipality, in accepting and receiving moneys on its behalf for airports or other air navigation facility purposes, and in contracting for the planning, acquisition,
construction, improvement, maintenance, or operation of
airports or other air navigation facilities, financed, either in
whole or in part, by federal moneys. A municipality is
authorized to and may enter into an agreement with the
commission prescribing the terms and conditions of such
agency in accordance with federal laws, rules, and
regulations and with this article. All moneys paid by the
United States government shall be retained by the state or
paid to said municipalities under such terms and conditions
as may be imposed by the United States government in
making such grants.

(c) All contracts for the planning, acquisition,
construction, improvement, maintenance, and operation of
airports, or other air navigation facilities made by the
commission, either as the agent of the state or as the agent
of any municipality therein, shall be made pursuant to the
laws of this state governing the making of like contracts:
Provided, That where the planning, acquisition,
construction, improvement, maintenance, and operation of
any airport or other air navigation facility is financed wholly
or partially with federal moneys, the commission, as agent
of the state or of any municipality thereof, may let contracts
in the manner prescribed by the federal authorities, acting
under the laws of the United States, and any rules or
regulations made thereunder, notwithstanding any other
state law to the contrary.

(d) All moneys accepted for disbursement by the
commission pursuant to this section shall be deposited in the
State Treasury, and, unless otherwise prescribed by the
authority from which the money is received, kept in separate
funds, designated according to the purposes for which the
moneys were made available, and held by the state in trust
for such purposes. All such moneys are hereby appropriated
for the purposes for which they were made available and
shall be expended in accordance with federal laws and
regulations and this article. The commission is authorized,
whether acting for this state or as the agent of any
municipality therein, when requested by the United States government or any agency or department thereof, or when requested by the state or municipality for which the money has been made available, to disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

(e) The state or any municipality therein is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and is authorized to accept federal aid, either by way of outright grant or by matching the funds, in whole or in part, as may be required, and to comply with the provisions of the laws of the United States and any rules or regulations made thereunder for the expenditure of federal moneys upon such airports and other navigation facilities.


(a) The commission is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, maintain, and operate airports and air navigation facilities within the state. For these purposes the commission may, by purchase, gift, devise, lease, condemnation, or otherwise, acquire such property, real or personal, as is necessary to permit safe and efficient operation of the airports and air navigation facilities. In like manner, the commission may acquire existing airports and air navigation facilities: Provided, That it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality. The commission may by sale, lease, or otherwise, dispose of any such property, airport, air navigation facility, or portion thereof or interest therein. Any disposal by lease shall be made pursuant to the terms of §8-28-7 of this code. Any disposal by sale or otherwise shall be in accordance with the laws of
this state governing the disposition of other property of the
state, except that in the case of disposal to any municipality
or state government or the United States for aeronautical
purposes incident thereto the sale or other disposal may be
effected in such manner and upon such terms as the
commission determines are in the best interest of the state.

(b) Nothing contained in this article shall be construed
to limit any right, power, or authority of the state or a
municipality to regulate airport hazards by zoning.

(c) The commission may exercise any powers granted
by this section jointly with any municipalities or agencies of
the state government, with other states or their
municipalities, or with the United States.

(d) In the condemnation of property authorized by this
section, the commission shall proceed in the name of the
state in the manner provided by §54-1-1, et seq. of this code.

§29-2A-11. Operation of aircraft while under influence of
alcohol, controlled substances or drugs; criminal penalties.

(a) Any person who:

(1) Operates an aircraft in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled
substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of
alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her
blood of four hundredths of one percent or more, by weight;
and
(2) When so operating an aircraft does any act forbidden by law or fails to perform any duty imposed by law in the operation of such aircraft, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of imprisonment of not less than one year nor more than five years, or in the discretion of the court, be confined in jail not more than one year and be fined not more than $500.

(b) Any person who:

(1) Operates an aircraft in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of four hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $500, or both, in the discretion of the court.

(c) Any person who:

(1) Knowingly permits his or her aircraft to be operated in this state by any other person who is:

(A) Under the influence of alcohol; or

(B) Under the influence of any controlled substance; or
(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of four hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $500, or both, in the discretion of the court.

(d) A person violating any provision of subsection (a) of this section is, for the second offense under this section, guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of imprisonment of not less than one year nor more than five years.

(e) A person violating any provision of subsection (b) or (c) of this section is, for the second offense under this section, guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of imprisonment of not less than one year nor more than three years.

(f) For purposes of subsections (d) and (e) of this section relating to second and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of the prior enactment of this section;

(2) Any conviction under a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b) or (c) of this section.

(g) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this
section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In such case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(h) The fact that any person charged with a violation of subsection (a) or (b) of this section, or any person permitted to operate an aircraft as described under subsection (c) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b) or (c) of this section.

(i) For purposes of this section, the term “controlled substance” shall have the meaning ascribed to it in chapter sixty-a of this code.

(j) When any person is convicted of violating any provision of this section, the clerk of the court in which such conviction is had shall, within seventy-two hours after receipt thereof, transmit a true copy thereof to the federal aviation administration.


No person shall operate or cause or authorize to be operated any aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States; nor shall any person engage in aeronautics as an airman in this state unless he or she has an appropriate effective airman certificate, permit, rating or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such
certificate, permit, rating or license is required by the
United States.

Where a certificate, permit, rating or license is required
for an airman by the United States, it shall be kept in his or
her personal possession when he or she is operating within
this state and shall be presented for inspection upon the
demand of any law enforcement officer, or any official,
manager or person in charge of any airport upon which the
airman shall land, or upon the reasonable request of any
other person. Where a certificate, permit or license is
required by the United States for an aircraft, it shall be
carried in the aircraft at all times while the aircraft is
operating in the state, shall be conspicuously posted in the
aircraft where it may readily be seen by passengers or
inspectors, and shall be presented for inspection upon the
demand of any law enforcement officer, or any official,
manager or person in charge of any airport upon which the
aircraft shall land, or upon the reasonable request of any
person.


It shall be the duty of all law enforcement officers, to
enforce and assist in the enforcement of this article and all
other laws of this state relating to aeronautics. Law
enforcement officers are authorized to inspect and examine
at reasonable hours any aircraft, the credentials of any
airman or other person engaged in aeronautics required by
the laws of this state or of the United States to have in his or
her possession credentials evidencing his or her authority or
permission to engage in aeronautics, any premises and the
buildings and other structures thereon, where airports, air
navigation facilities or other aeronautical activities are
operated or conducted.


[Repealed.]
§29-2A-17. Investigations; hearings; power to subpoena witnesses; self-incrimination.


§29-2A-19. Federal-state joint hearings; reciprocal services; accident reporting.

§29-2A-21. Use of state and municipal facilities and services.


§29-2A-25. Exchange of information as to violations.


AN ACT to amend and reenact §19-23-14 of the Code of West Virginia, 1931, as amended, requiring the payment of all civil penalties imposed against thoroughbred horse racing licensees or permit holders to be paid into a fund for expenses associated with the post-mortem examination of all thoroughbreds that suffer breakdowns and are euthanized on a racetrack or that otherwise expire on a racetrack; requiring that any funds in excess of $10,000 in such fund at the end of a fiscal year, less outstanding obligations, may be expended by the racing commission to aid in the rescue, retraining, rehabilitation and aftercare of thoroughbred racehorses that are no longer able to compete on the racetracks in this state, and may be expended to aid in the payment of hospitalization, medical care and funeral expenses occasioned by injuries or death sustained by a thoroughbred racing permit holder at a licensed thoroughbred racetrack in this state; authorizing the racing commission to promulgate rules to govern such expenditures; and requiring the payment of all civil penalties imposed against greyhound racing licensees or permit holders to be paid into a fund to be expended for greyhound adoption programs involving West Virginia whelped dogs owned by residents of this state pursuant to rules promulgated by the racing commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-14. Disposition of permit fees, registration fees and civil penalties.

1 (a) All permit fees and fees paid for the registration of 2 colors or assumed names collected by the Racing
Commission shall be paid by the commission to the State Treasurer for deposit in the Racing Commission’s general administrative account.

(b) All civil penalties imposed by the stewards, or the commission against thoroughbred horse racing licensees or permit holders shall be paid into a fund for expenses associated with the post-mortem examination of thoroughbreds that suffer breakdowns on a racetrack, in training or in competition, and that are euthanized, or thoroughbreds that expire while stabled on a racetrack under the jurisdiction of the Racing Commission: Provided, That any balance in the fund at the end of any fiscal year in excess of $10,000, less any outstanding obligations, shall be divided equally and may be expended by the Racing Commission for the following:

(1) To aid in the rescue, retraining, rehabilitation and aftercare of thoroughbred racehorses that are no longer able to compete on the racetracks in this state pursuant to rules promulgated by the Racing Commission to govern such expenditures.

(2) To aid in the payment of hospitalization, medical care and funeral expenses occasioned by injuries or death sustained by a thoroughbred racing permit holder at a licensed thoroughbred racetrack in this state pursuant to rules promulgated by the Racing Commission to govern such expenditures: Provided, That no payment shall be made for any hospitalization, medical care or funeral expenses to any thoroughbred racing permit holder who is covered under workers compensation insurance or who is covered under any insurance policy that provides full or partial payments for hospitalization, medical care or funeral expenses.

(c) All civil penalties imposed by the judges or the commission against greyhound racing licensees or permit holders shall be paid into a fund to be expended for greyhound adoption programs involving West Virginia whelped dogs owned by residents of this state pursuant to rules promulgated by the Racing Commission.
AN ACT to amend and reenact §4-8-4 of the Code of West Virginia, 1931, as amended, relating to expanding areas of the capitol complex requiring Capitol Building Commission authorization for certain renovations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-4. Powers and duties generally.

The Capitol Building Commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, which affect the appearance thereof. In all instances constituting a substantial physical change, the approval of the commission is mandatory before a contract may be let or before changes are started if the work is not done under a contract or before work on a change order in excess of $40,000 is begun and includes all areas occupied by the Legislature, the Governor, and the Supreme Court of Appeals. As used in this article, the surrounding complex shall include the Governor’s Mansion and other buildings used by the Governor as part of his or her residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state capitol, and the roadways, structures and facilities which are incidental to such buildings. As used in this
article, substantial physical change shall include, but not be limited to, permanent physical changes that alter the appearance of all areas of the capitol building and surrounding complex. The secretary of the Department of Administration shall promulgate rules and regulations, pursuant to the provisions of §29A-1-1 et seq. of this code, which rules and regulations shall be subject to the approval of the Capitol Building Commission, to implement the provisions of this article.

CHAPTER 133

(Com. Sub. for S. B. 1 - By Senators Carmichael (Mr. President), Sypolt, Cline, Takubo, Boso, Clements, Swope, Smith, Ihlenfeld, Baldwin, Stollings, Weld and Plymale)

[Passed March 7, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-2E-11; to amend and reenact §18-9A-2 of said code; to amend said code by adding thereto a new section, designated §18B-3C-16; and to amend said code by adding thereto a new article, designated §18C-9-1, §18C-9-2, §18C-9-3, §18C-9-4, §18C-9-5, and §18C-9-6, all relating generally to increasing access to career education and workforce training; requiring State Board of Education to promulgate rules for advanced certifications; providing that certain individuals who have completed a secondary education program in a public, private, or home school shall be considered adults enrolled in regular secondary programs for funding purposes; redesignating certain qualifying tests as high school equivalency tests; requiring pathways and other
additional requirements for Advanced Career Education programs; requiring community and technical colleges, public baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, to establish partnerships that provide for Advanced Career Education programs; providing requirements for Advanced Career Education programs and pathways; requiring Department of Commerce to provide written notification to State Board of Education, West Virginia Council for Community and Technical College Education, and West Virginia Higher Education Policy Commission of a determination of areas of workforce need within the state and to develop a hierarchy therefor; requiring State Superintendent of Schools, Chancellor of the Council for Community and Technical College Education, Chancellor of the Higher Education Policy Commission, and the Chancellor of the Higher Education Policy Commission to facilitate the Advanced Career Education programs; requiring State Board of Education and West Virginia Council for Community and Technical College Education to jointly promulgate certain guidelines and maintain and report certain information to Governor and Legislative Oversight Commission on Education Accountability; requiring State Superintendent of Schools, Chancellor for the Council for Community and Technical College Education, and Chancellor of the Higher Education Policy Commission to approve written partnership agreements; modifying definition of “net enrollment” to increase number of Advanced Career Education programs students for which secondary education funding may be provided and imposing conditions on certain institutions to receive funding; encouraging community and technical colleges that offer associate degrees to enter into collaborative agreements with federally registered apprenticeship programs and requiring a report regarding such collaborative agreements be provided to the Legislature and Governor annually; establishing WV Invests Grant Program; providing findings and purposes; defining terms; providing for administration of program by vice chancellor for
administration; requiring West Virginia Council for Community and Technical College Education to award WV Invests grants under certain terms and conditions; requiring the council to report certain information on WV Invests Grant Program to Governor and Legislature; requiring the council to propose legislative rules and authorizing emergency rules; limiting eligibility for funding beginning fiscal year 2021; providing eligibility and renewal requirements for a WV Invests Grant; requiring applicants enter into certain agreements; and establishing the WV Invests Fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.

(a) The state board shall promulgate rules for the accreditation, classification, and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for granting diplomas, advanced certifications, and certificates of proficiency by those schools.

(1) The certificates of proficiency shall include specific information regarding the graduate’s skills, competence, and readiness for employment, or honors and advanced education and shall be granted, along with the diploma, to every eligible high school graduate.

(2) The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses, or other more rigorous substitutes related to the major, and the recommended electives.
(3) Students who have completed a secondary education program in a public, private, or home school and have continued to be enrolled in a program leading to an advanced certification or an advanced career education program shall be considered adults enrolled in regular secondary programs in accordance with §18-9A-2(i) of this code: Provided, That the State Superintendent of Schools, the Chancellor for the Council for Community and Technical College Education, the Chancellor of the Higher Education Policy Commission, and the Secretary of the Department of Commerce may designate additional programs that provide valuable workplace credentials and students enrolled in such programs shall also be considered adults enrolled in regular secondary programs in accordance with §18-9A-2(i) of this code.

(b) An institution of less than collegiate or university status may not grant any diploma or certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the state board.

(c) A charter or other instrument containing the right to issue diplomas or certificates of proficiency may not be granted by the State of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing the diplomas or other certificates of proficiency has first been approved in writing by the state board.

(d) The state board shall promulgate a rule for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure.

(1) This rule may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, the establishment of licensure requirements for alternative education program teachers,
and the establishment of performance measures for school accreditation.

(2) This rule shall provide uniform definitions of disruptive student behavior and uniform standards for the placement of students in alternative settings or providing other interventions including referrals to local juvenile courts to correct student behavior so that they can return to a regular classroom without engaging in further disruptive behavior.

(e) The state board shall establish up to five pilot projects at the elementary or middle school levels, or both, that employ alternative schools or other placements for disruptive students to learn appropriate behaviors so they can return to the regular classroom without further disrupting the learning environment. The state board shall report to the Legislative Oversight Commission on Education Accountability by December 1, 2010, on its progress in establishing the pilot projects and by December 1 in each year after that for the duration of the pilot projects on the effect of the projects on maintaining student discipline.

(f) If a student attends an approved alternative education program or the Mountaineer Challenge Academy, which is designated as a special alternative education program pursuant to §15-1B-24 of this code, and the student graduates or passes the high school equivalency tests within five years of beginning ninth grade, that student shall be considered graduated for the purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to the following:

(1) The student shall be considered graduated only to the extent that this is not in conflict with any provision of federal law relating to graduation rates;

(2) If the state board determines that this is in conflict with a provision of federal law relating to graduation rates,
the state board shall request a waiver from the United States Department of Education; and

(3) If the waiver is granted, notwithstanding the provisions of §18-2-6(f)(1) of this code, the student graduating or passing the high school equivalency tests within five years shall be considered graduated.

(g) The state board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the Mountaineer Challenge Academy which is designated as a special alternative education program pursuant to §15-1B-24 of this code for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in §15-1B-24 of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:

(A) The student shall be considered at full enrollment status only for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the state board determines that this is in conflict with a provision of federal law relating to attendance or
graduation rates, the state board shall request a waiver from
the United States Department of Education;

(C) If the waiver is granted, notwithstanding the
provisions of §18-2-6(g)(3)(A) of this code, the student
shall be considered at full enrollment status in the referring
county for the purposes of calculating attendance and
graduation rates; and

(D) Consideration of the student at full enrollment status
in the referring county is for the purposes of funding and
calculating attendance and graduation rates only. For any
other purpose, a student participating in the academy is
considered withdrawn from the public school system;

(4) Articulation of the knowledge, skills, and
competencies gained through alternative education so that
students who return to regular education may proceed
toward attainment or may attain the standards for graduation
without duplication;

(5) Consideration of eligibility to take the high school
equivalency tests by qualifying within the extraordinary
circumstances provisions established by state board rule for
a student participating in the Mountaineer Challenge
Academy special alternative education program who does
not meet any other criteria for eligibility; and

(6) Payment of tuition by a county board to the
Mountaineer Challenge Academy for each student
graduating from the academy with a high school diploma
that resides in that county board’s school district. For
purposes of this subdivision, “tuition” means an amount
equal to 75 percent of the amount allotted per pupil under
the school aid formula.

(h) Nothing in this section or the rules promulgated
under this section compels the Mountaineer Challenge
Academy to be operated as a special alternative education
program or to be subject to any other laws governing the public schools except by its consent.

(i) The Legislature makes the following findings regarding students at risk:

(1) Defeated and discouraged learners. —

(A) Any child who is unlikely to graduate on schedule with both the skills and self-esteem necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs, and personal relationships may be defined as being an at-risk student;

(B) Problems associated with students at risk often begin for them in the early grades as they gradually fall further behind in the essential skills of reading, writing, and math;

(C) These problems may be accompanied by such behavior patterns as poor attendance, inattentiveness, negative attitudes, and acting out in class. These patterns are both symptoms of and added catalysts for students to become increasingly defeated and discouraged learners;

(D) By the middle grades, students with growing skill deficits usually know they are behind other students and have good reason to feel discouraged. A growing lack of self-confidence and self-worth, limited optimism for the future, avoidance of school and adults, and a dimming view of the relationship between effort and achievement are among the characteristics of defeated and discouraged learners;

(E) Public schools are expected to address the needs of all students, minimizing the likelihood that they will become at risk and giving additional attention to those who do; however, the circumstances involved with a becoming at risk often are complex and may include influences both within and outside of the school environment; and
In fragile homes, a child who is at risk and is becoming a discouraged and defeated learner often lacks adequate support and may develop peer relationships that further exacerbate the difficulty of reengaging him or her in learning, school, and responsible social behavior.

The Legislature further finds that the public schools should not be deterred from seeking and assisting with enrollment of students in an alternative program that helps remedy the discouragement, lessens skill deficits, and facilitates a successful return to public school.

For this purpose, subject to approval of the county superintendent, a student enrolled in the public schools of the county may continue to be enrolled while also enrolled in an alternative program subject to the following conditions:

1. The alternative program is approved by the state board;
2. The student meets the general description of an at-risk student and exhibits behaviors and characteristics associated with a discouraged and defeated learner;
3. The alternative program complies with all requests of the county superintendent for information on the educational program and progress of the student;
4. The alternative program includes a family involvement component in its program. This component shall include, but is not limited to, providing for student and parent participation in activities that help address the challenging issues that have hindered the student’s engagement and progress in learning;
5. The alternative program includes an on-site boarding option for students;
6. The alternative program provides an individualized education program for students that is designed to prepare
them for a successful transition back into the public schools; and

(7) The parents or legal guardian of the student make application for enrollment of the student in the alternative program, agree to the terms and conditions for enrollment, and enroll the student in the program.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-11. Advanced Career Education.

(a) The Legislature hereby makes the following findings:

(1) Preparing West Virginia students to achieve post-secondary career education and to excel in the workforce is a responsibility shared among all state education agencies and institutions. The state’s education agencies and institutions can fulfill this responsibility by establishing partnerships that enable students to attain advanced career education and valuable workforce skills in a more efficient and advantageous manner;

(2) The formation of partnerships between public secondary schools and community and technical colleges or public baccalaureate institutions which establish advanced career education programs would ensure that a full range of community and technical college programs and services are provided in all areas of the state;

(3) Programs which create clear and efficient pathways that begin during secondary education and lead to obtaining advanced certifications and associate degrees will increase the number of students that ultimately obtain a post-secondary credential or degree; and

(4) West Virginia’s economic prosperity is directly tied to the level and quality of its workforce career education.

Providing the students of this state with increased access to
career education will not only improve the general well-being of its citizens, but greatly enhance the economic prosperity of the state.

(b) The purpose of this section and the Advanced Career Education (ACE) programs authorized herein is to connect secondary schools with community and technical colleges or public baccalaureate institutions that provide associate degrees to accomplish the following:

(1) Prepare secondary students for success in post-secondary education and the workforce; and

(2) Provide more opportunities for secondary students to earn post-secondary college credits, certifications, and associate degrees.

(c) To effectuate the purposes set forth in §18-2E-11(b) of this code, community and technical colleges, public baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, shall establish partnerships that provide for ACE programs which feature defined pathways that begin when a student is in secondary education and that ultimately lead to advanced certifications or associate degrees awarded by community and technical colleges or baccalaureate institutions. ACE programs shall be equally available to public, nonpublic, and homeschool students.

(d) ACE programs shall include pathways that consist of a curriculum of courses leading to advanced certifications or an associate degree that have been deemed to satisfy a workforce need as determined by the Department of Commerce.

(1) The Department of Commerce shall, on occasion, but at least annually, provide written notification to the State Board of Education, the West Virginia Council for Community and Technical College Education and the West
Virginia Higher Education Policy Commission of a determination of areas of workforce need within the state.

(2) The Department of Commerce, in consultation with the council, the commission, and business partners, will develop a hierarchy of high demand skilled professions and workforce needs with shortages, which shall be given priority in administration of the program.

(e) The State Superintendent of Schools, the Chancellor of the Council for Community and Technical College Education, and the Chancellor of the Higher Education Policy Commission, or their designees, shall facilitate the ACE programs. At a minimum, an ACE program shall satisfy the following objectives:

(1) Provide additional opportunities to students in this state to attain advanced certifications and college credentials leading to associate degrees through ACE pathways;

(2) Increase the number of students in this state that attain advanced certifications and college credentials leading to associate degrees through ACE pathways;

(3) Allow students in this state to attain advanced certifications and college credentials leading to associate degrees through ACE pathways at little or no cost;

(4) Ensure that ACE pathways provide a clear roadmap to the courses and requirements necessary to attain advanced certifications and college credentials leading to associate degrees; and

(5) Ensure that course requirements within ACE pathways are not duplicated.

(f) The board and council shall jointly promulgate guidelines for the administration of ACE programs and pathways, which must be affirmatively adopted by the board
and the council. At a minimum, such guidelines shall provide for the following:

1. That ACE program partnerships established between community and technical colleges, public baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, shall be reduced to written partnership agreements;

2. The information required to be contained within partnership agreements;

3. That ACE programs and pathways must meet the requirements of the accrediting entity for the community and technical college or public baccalaureate institution awarding the associate degrees or advanced certificates;

4. That partnership agreements shall be approved by the State Superintendent of Schools, the Chancellor for the Council for Community and Technical College Education and the Chancellor of the Higher Education Policy Commission; and

5. Any other provisions necessary to effectuate the purposes of this section.

(g) The board and the council shall maintain and annually report to the Governor and the Legislative Oversight Commission on Education Accountability the following information about ACE programs:

1. The identity and number of partnership agreements;

2. The ACE programs and pathways that are being utilized by career technical education centers, county boards of education, community and technical colleges, and public baccalaureate institutions; and

3. The nature and number of degrees and certifications awarded to students participating in ACE programs by each
ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


For the purpose of this article:

(a) “State board” means the West Virginia Board of Education.

(b) “County board” or “board” means a county board of education.

(c) “Professional salaries” means the state legally mandated salaries of the professional educators as provided in §18A-4-1 et seq. of this code.

(d) “Professional educator” shall be synonymous with and shall have the same meaning as “teacher” as defined in §18-1-1 of this code, and includes technology integration specialists.

(e) “Professional instructional personnel” means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director, or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance, or psychologist duties.

(f) “Professional student support personnel” means a “teacher” as defined in §18-1-1 of this code who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor’s degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional educators
pursuant to §18-9A-4 of this code, professional student support personnel are professional educators.

(g) “Service personnel salaries” means the state legally mandated salaries for service personnel as provided in §18A-4-8a of this code.

(h) “Service personnel” means all personnel as provided in §18A-4-8 of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by 200: Provided, That the computation for any service person employed for three and one-half hours or fewer per day as provided in §18A-4-8a of this code shall be calculated as one-half an employment day.

(i) “Net enrollment” means the number of pupils enrolled in special education programs, kindergarten programs, and grades one to 12, inclusive, of the public schools of the county. Net enrollment further shall include:

(1) Adults enrolled in regular secondary vocational programs, subject to the following:

(A) Net enrollment includes no more than 2,500 of those adults counted on the basis of full-time equivalency and apportioned annually to each county to support Advanced Career Education programs, as provided in §18-2E-11 of this code, in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: Provided, That beginning with the 2021 fiscal year and every year thereafter, a career technical education center may only receive the funding for enrollment as authorized by this paragraph if the center has satisfied the requirements of §18-2E-11 of this code; and

(B) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student;
(2) Students enrolled in early childhood education programs as provided in §18-5-44 of this code, counted on the basis of full-time equivalency;

(3) A pupil may not be counted more than once by reason of transfer within the county or from another county within the state, and a pupil may not be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) For the purposes of determining the county’s basic foundation program only, for any county whose net enrollment as determined under all other provisions of this definition is less than 1,400, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

(A) Divide the state’s lowest county student population density by the county’s actual student population density;

(B) Multiply the amount derived from the calculation in §18-9A-2(i)(5)(A) of this code by the difference between 1,400 and the county’s actual net enrollment;

(C) If the increase in net enrollment as determined under this subdivision plus the county’s net enrollment as determined under all other provisions of this subsection is greater than 1,400, the increase in net enrollment shall be reduced so that the total does not exceed 1,400; and

(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and a sparse population density.
(j) “Sparse-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to §18-9A-2(i)(5) of this code, of the definition of “net enrollment”, to the square miles of the county is less than five.

(k) “Low-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to §18-9A-2(i)(5) of this code, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than five but less than 10.

(l) “Medium-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to §18-9A-2(i)(5) of this code, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than 10 but less than 20.

(m) “High-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to §18-9A-2(i)(5) of this code, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than 20.

(n) “Levies for general current expense purposes” means 90 percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to §11-8-6f of this code.

(o) “Technology integration specialist” means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

(p) “State aid eligible personnel” means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this
article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution, or other specific funding source not listed.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-16. Encouragement of collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

(a) The Legislature finds that apprenticeship programs provide a valuable educational opportunity that can be enhanced by community and technical colleges that offer associate degrees. Accordingly, the Legislature hereby encourages, but is not requiring, community and technical colleges that offer associate degrees to enter into collaborative agreements with federally registered apprenticeship programs that are registered with the United States Department of Labor.

(b) On or before January 1 of each year, the council shall provide to the Legislature and the Governor a report regarding the collaborative agreements between community and technical colleges and federally registered apprenticeship programs. The report should identify those community and technical colleges that have entered into a collaborative agreement with federally registered apprenticeship programs, the number of students participating in such apprenticeship programs, the number of community and technical colleges credits earned by students in such apprenticeship programs, the number of students employed in a relevant field of study during such apprenticeship programs and for the year after completion of such apprenticeship programs, and the average compensation of the students employed in a relevant field of study during their enrollment in such apprenticeship programs.
programs and for the year after completion of such apprenticeship programs.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 9. WEST VIRGINIA INVESTS GRANT PROGRAM.

§18C-9-1. Short title.

This article shall be known and may be cited as the WV Invests Grant Program.

§18C-9-2. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) Every West Virginian should have access to education and training that will lead directly to quality employment opportunities within the state. In order for West Virginia to retain and attract business and industry, it must ensure that its workforce has such education and training;

(2) West Virginia currently faces a human capital crisis, as the state regularly ranks amongst the lowest states in the nation in workforce participation rates. Improving the state’s workforce participation rates and the level of the workforce’s career education is critical to economic development and making West Virginia a more prosperous state;

(3) The 2017 West Virginia Forward Report, a strategy for economic development and job growth, found that “investments in improving human capital are considered the most significant opportunity for improvement in West Virginia, especially because access to a specialized workforce is a significant factor for investment attraction…”;

(4) According to the United States Department of Labor’s Bureau of Labor Statistics, the median yearly
earnings of an individual with an associate’s degree is approximately $6,604 more than an individual with only a high school diploma. Therefore, any investment by the state into a citizen obtaining such a degree would be repaid multiple times over through the citizen’s increased contributions to the economy and tax base;

(5) West Virginia is currently facing a devastating drug epidemic, and the hope that comes with increased access to career education and higher quality employment opportunities is an indispensable tool against the spread of drug addiction; and

(6) An investment by the state into increasing access to post-secondary career education will provide its citizens the hope and opportunity for better career opportunities, and provide the state with the trained workforce needed to attract significant economic development.

(b) The purpose of this article is to provide West Virginians with hope and economic prosperity by increasing access to a higher level of career education that is needed to fulfill the needs of today’s workforce and provide for further economic development.

§18C-9-3. Definitions.

As used in this article:

“Council” means the West Virginia Council for Community and Technical College Education;

“Commission” means the West Virginia Higher Education Policy Commission;

“Eligible institution” means a public community and technical college under the authority of the West Virginia Council for Community and Technical College Education or a public baccalaureate institution that grants associate degrees satisfying the requirements of participating in
Advanced Career Education (ACE) program partnerships in accordance with §18-2E-11 of this code;

“Eligible post-secondary program” means a curriculum of courses leading to a certificate or associate degree at an eligible institution which satisfies a course of study that has been deemed by the Department of Commerce to satisfy a workforce need as determined by the department in accordance with §18-2E-11(d) of this code; and

“Tuition” means the semester or term charges imposed by an eligible institution and, additionally, all mandatory fees required as a condition of enrollment by all students.

§18C-9-4. WV Invests Grant Program.

(a) There is hereby created a grant program known as the WV Invests Grant Program, which shall be administered by the vice chancellor for administration in accordance with this article.

(b) The council shall award WV Invests Grants pursuant to the following terms and conditions:

(1) A WV Invests Grant may only be awarded to applicants satisfying the requirements provided in §18C-9-5 of this code;

(2) The maximum amount of a WV Invests Grant shall be the cost of tuition charged to all students for coursework leading to completion of the chosen associate degree or certificate, less all other state and federal scholarships and grants for which the student is eligible. All other state and federal scholarships and grants for which the grant recipient is eligible shall be deducted from the amount of the WV Invests Grant for each individual student. The amount of a WV Invests Grant at an eligible public baccalaurenate institution shall not exceed the average cost of tuition and mandatory fees of the community and technical colleges.
(3) Grant payments shall be made directly to the eligible institutions;

(4) If a grant recipient transfers from one eligible institution to another, the grant is transferable only with approval of the vice chancellor for administration;

(5) A WV Invests Grant may be used at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program. An institution is not required to accept a grant recipient for enrollment and may enforce its own admission requirements, standards, and policies; and

(6) If a WV Invests Grant recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned by the institution to the council in accordance with the council’s policy for issuing refunds. The council shall transfer such funds to the WV Invests Fund for allocation and expenditure.

(c) On or before January 1 annually, the council shall provide to the Legislature and the Governor a report on the WV Invests Grant Program, which shall include, but not be limited to, research and data concerning student success and grant retention.

(d) The council shall propose legislative rules for legislative approval pursuant to §29A-3A-1 et seq. of this code to implement the provisions of this article, which shall provide for:

(1) Application requirements and deadlines fully implementing requirements of this article;

(2) Appeal procedures for the denial or revocation of the grant; and

(3) Any other provisions necessary to effectuate the purposes of this article.
(e) The Legislature hereby declares that an emergency situation exists and, therefore, the council may establish, by emergency rule, under the procedures of §29A-3A-1 et seq. of this code, a rule to implement the provisions of this article.

(f) Beginning with the 2021 fiscal year, and for every fiscal year thereafter, any appropriation by the Legislature to support and or alleviate the cost to citizens in this state to obtain advanced certifications and associate degrees shall only be distributed to those community and technical colleges or public baccalaureate institutions that form one or more partnerships to establish ACE programs and pathways. Once distributed, such funds may be used to support any eligible post-secondary program or pathway provided by an eligible institution leading to the award of such degree or certification.

§18C-9-5. Eligibility requirements; agreements.

(a) To be eligible for a WV Invests Grant, an individual must satisfy the following requirements:

(1) Be a citizen or legal resident of the United States and have been a resident of West Virginia for at least one year immediately preceding the date of application for a grant;

(2) Have completed a secondary education program in a public, private, or home school;

(3) Have not been previously awarded a post-secondary degree;

(4) Be at least 18 years of age: Provided, That individuals younger than 18 years of age may qualify for the grant upon completion of a secondary education program in a public, private, or home school;

(5) Meet the admission requirements of, and be admitted into, an eligible institution;
(6) Satisfactorily meet any additional qualifications of enrollment, academic promise, or achievement as established by the council through rule;

(7) Have filed a completed free application for federal student aid for the academic year in which the grant award is sought;

(8) Be enrolled in an eligible post-secondary program;

(9) Be enrolled in at least six credit hours per semester;

(10) Have completed a WV Invests Grant application as provided by the council in accordance with a schedule established by the council; and

(11) Have, prior to the start of each semester, satisfactorily passed a drug test administered by the eligible institution: Provided, That the applicant shall be responsible for the actual cost of the drug test.

(b) Each grant may be renewed until the course of study is completed as long as the following qualifications, as determined by the vice chancellor for administration and the council, are satisfied:

(1) Maintaining satisfactory academic standing, including a cumulative grade point average of at least 2.0;

(2) Making adequate progress toward completion of the eligible post-secondary program;

(3) Satisfactory participation in a community service program authorized by the council. The council shall include in the legislative rules, required by §18C-9-4 of this code, provisions for the administration of community service requirements, including, but not limited to, requiring completion of at least eight hours of unpaid community service during the time of study, which may include, but is not limited to, participating with nonprofit, governmental, institutional, or community-based organizations designed to
improve the quality of life for community residents, meet
the needs of community residents, or foster civic
responsibility;

(4) Continued satisfaction of eligibility requirements
provided by §18C-9-5(a) of this code; and

(5) Satisfaction of any additional eligibility criteria
established by the council through legislative rule.

(c) Each recipient of a WV Invests Grant shall enter into
an agreement with the vice chancellor for administration,
which shall require repayment of an amount of the grant or
grants awarded to the recipient, in whole or in part, if a
recipient chooses to reside outside the state within two years
following obtainment of the degree or certificate for which
the grant or grants were awarded. The council may not
require a recipient to repay grants, in whole or in part, unless
the prospective recipient has been informed of this
requirement in writing before initial acceptance of the grant
award. Each WV Invests Grant agreement shall include the
following:

(1) Disclosure of the full terms and conditions under
which assistance under this article is provided and under
which repayment may be required; and

(2) A description of the appeals procedure required to
be established under this article.

(d) WV Invests Grant recipients found to be in
noncompliance with the agreement entered into under
§18C-9-5(c) of this code shall be required to repay the
amount of the grant awards received, plus interest, and,
where applicable, reasonable collection fees, on a schedule
and at a rate of interest prescribed in rules promulgated by
the council. The council shall also provide for proration of
the amount to be repaid by a recipient who maintains
employment in the state for a period of time within the time
period required under §18C-9-5(c) of this code.
(e) A recipient is not in violation of an agreement entered into pursuant to §18C-9-5(c) of this code during any period in which the recipient is meeting any of the following conditions:

(1) Pursuing a half-time course of study at an accredited institution of higher education;

(2) Serving as a member of the armed services of the United States;

(3) Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician; or

(4) Satisfying the provisions of any additional repayment exemptions prescribed by the council through rule.

§18C-9-6. WV Invests Fund; established.

(a) The WV Invests Fund is hereby created in the State Treasury as a special revenue account. The fund shall be administered by the vice chancellor for administration and may consist of:

(1) All appropriations by the Legislature for the WV Invests Fund;

(2) Any gifts, grants, or contributions received for the WV Invests Fund; and

(3) All interest or other income earned from investment of the WV Invests Fund.

(b) The WV Invests Fund shall be expended for the purpose of administering the WV Invests Grant Program, including the awarding of grants authorized by this article. Any funds remaining in the fund at the close of the fiscal year are carried forward for use in the next fiscal year.
(c) Nothing in this section requires any specific level of funding by the Legislature nor guarantees or entitles any individual to any benefit or grant of funds.

CHAPTER 134

(Com. Sub. for S. B. 441 - By Senators Prezioso, Beach, Blair, Clements, Ihlenfeld, Maroney, Smith, Stollings, Sypolt, Takubo, Jeffries, Trump and Weld)

[Passed March 4, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §18B-4-5 of the Code of West Virginia, 1931, as amended, relating to campus police officers of state institutions of higher learning; and allowing governing boards of state institutions of higher learning to appoint all qualified individuals to serve as campus police officers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal; law enforcement grants.

(a) The governing boards may appoint qualified individuals to serve as campus police officers upon any premises owned or leased by the State of West Virginia and under the jurisdiction of the governing boards, subject to the conditions and restrictions established in this section.

(1) A person who previously was qualified for employment as a law-enforcement officer for an agency or political subdivision of any state is considered qualified for appointment as a campus police officer.
(2) Before performing duties as a campus police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by §6-1-1 et seq. of this code; and

(B) Posting an official bond as required by §6-2-1 et seq. of this code.

(b) A campus police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5 of this code or meets the requirements of subsection (a) of this section.

(c) It is the duty of a campus police officer to preserve law and order:

(1) On the premises under the jurisdiction of the governing board; and

(2) On any street, road, or thoroughfare, except controlled access and open country highways, immediately adjacent to or passing through premises, to which the officer is assigned by the president of the institution.

(A) For the purpose of this subdivision, the campus police officer is a law-enforcement officer pursuant to the provisions of §30-29-1 et seq. of this code;

(B) The officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The officer is subject to all the requirements and responsibilities of a law-enforcement officer;

(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-
enforcement officers to preserve law and order on such premises;

(E) Campus police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state when:

(i) Traffic is generated as a result of athletic or other activities conducted or sponsored by the institution; and

(ii) The assistance has been requested by the local law-enforcement agency; and

(F) Campus police officers may assist a local law-enforcement agency in any location under the agency’s jurisdiction at the request of the agency.

(d) The salary of a campus police officer is paid by the employing governing board. A state institution may furnish each campus police officer with a firearm and an official uniform to be worn while on duty. The institution shall furnish and require each officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying the person’s identity and authority as a campus police officer.

(e) A governing board may at its pleasure revoke the authority of any campus police officer and such officers serve at the will and pleasure of the governing board. The president of the state institution shall report the termination of employment of a campus police officer by filing a notice to that effect in the office of the clerk of each county in which the campus police officer’s oath of office was filed.

(f) Notwithstanding any other provisions of this code to the contrary, and for purposes of enhancing the ability of campus police officers to perform their duties, a governing board may apply for and receive any public or private grant or other financial award that is available to other law-enforcement agencies in the state.
AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Acceptance of Advanced Placement Credit, Human Resources Administration, Guidelines for Governing Boards in Employing and Evaluating Presidents, and PROMISE Scholarship Program; and authorizing legislative rules for the Council for Community and Technical College Education regarding Tuition and Fees, Acceptance of Advanced Placement Credit, Initial Authorization of Degree-Granting Institutions, Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants, and Human Resources Administration.

Be it enacted by the Legislature of West Virginia:


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

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

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

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

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

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

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program), is authorized.

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

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

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

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

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

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

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

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized, with the following amendment:

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

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

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.
(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

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

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management), is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(v) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(w) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(x) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(y) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.
(z) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program), is authorized.

(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(bb) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(cc) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(dd) The legislative rule filed in the State Register on January 22, 2018, relating to the Higher Education Policy Commission (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: “Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: “Facility utilization
rates will be an important factor in prioritizing capital projects across the systems.”; 

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: “Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category.”; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: “A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.”.

(ee) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Acceptance of Advanced Placement Credit), is repealed.

(ff) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Human Resources Administration), is repealed.

(gg) The legislative rule filed in the State Register on August 28, 2018, relating to the Higher Education Policy
Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(hh) The legislative rule filed in the State Register on August 7, 2018, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence (PROMISE) Scholarship Program), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.a. and inserting in lieu thereof a new subdivision 2.1.a., to read as follows: “Must complete high school graduation requirements at a West Virginia public, private or home school unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and”;

On page one, subsection 2.1, by striking out all of subdivision 2.1.b. and inserting in lieu thereof a new subdivision 2.1.b., to read as follows: “Must complete at least one half of the credits required for high school graduation through attendance at a public, private or home school in this state, unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and”;

On page one, subdivision 2.1.c., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”; 

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Must have attained a cumulative grade point average of at least 3.0 on a 4.0 scale, based on county board grading policies, in both core courses and overall coursework required for graduation by the State Board of Education, while enrolled in a public or private high school. If home-schooled pursuant to the
exemption allowed by W.Va. Code §18-8-1 as documented by the county school board system, the applicant must have completed in both the 11th and 12th grades the required core and elective coursework necessary to prepare students for success in postsecondary education at the associate and baccalaureate levels by attaining a cumulative grade point average of at least 3.0 on a 4.0 grading scale in both core courses and overall coursework as determined by the Commission; and”;

On page one, subsection 2.1, subdivision 2.1.f., preceding the words “have resided in West Virginia”, by striking out the word “Must” and inserting in lieu thereof the words “The applicant and his or her parent or legal guardian must”; 

On page one, subdivision 2.1.f., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”;

On page one, subdivision 2.1.f., by striking out the words “Section 6” and inserting in lieu thereof the words “Section 5”;

On page two, subsection 2.4., by striking out the words “Section 10.7 or 10.8” and inserting in lieu thereof the words “Section 9.7 or 9.8”;

On page two, subsection 2.5, by striking out the words “Section 8” and inserting in lieu thereof the words “Section 7”;

On page two, subsection 2.5, by striking out the words “Section 10” and inserting in lieu thereof the words “Section 9”;

On page two, by striking out all of section 3 and renumbering the remaining sections accordingly;
On page three, subsection 4.4, by striking out the words “Section 14” and inserting in lieu thereof the words “Section 13”;

On page five-six, subsection 10.6, by striking out the words “Section 10.3” and inserting in lieu thereof the words “Section 9.3”;

On page six, subsection 10.6, by striking out the words “Section 10.2” and inserting in lieu thereof the words “Section 9.2”;

On page six, subsection 10.9.c., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”; and

On page eight, subsection 15.1.b, by striking out the words “Section 11.1” and inserting in lieu thereof the words “Section 10.1”.

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

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

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

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

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

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

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

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

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

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

(j) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (authorization of degree-granting institutions), is authorized.

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (annual reauthorization of degree-granting institutions), is authorized.
(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(m) The legislative rule filed in the State Register on August 21, 2012, relating to the West Virginia Council for Community and Technical College Education (West Virginia EDGE Program), is authorized.

(n) The legislative rule filed in the State Register on January 28, 2014, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized.

(o) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(p) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (Business, Occupational, and Trade Schools), is authorized.

(q) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(r) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new
subdivision 2.1.d., to read as follows: “Efficient use of
existing classroom and other space by institutions, while
maintaining an appropriate deference to the value
judgments of the institutional governing boards.”;

On page seven, subsection 4.2, by striking out all of
subdivision 4.2.d.5. and inserting in lieu thereof a new
subdivision 4.2.d.5., to read as follows: “Funding will be
prioritized for each institution in accordance with
institutional plans confirmed by the Commission or
approved by the Council.”;

On page seven, subsection 4.2, by striking out all of
subdivision 4.2.d.6. and inserting in lieu thereof a new
subdivision 4.2.d.6., to read as follows: “Facility utilization
rates will be an important factor in prioritizing capital
projects across the systems.”;

On page seven, subsection 4.2, by striking out all of
subdivision 4.2.d.7. and inserting in lieu thereof a new
subdivision 4.2.d.7., to read as follows: “Institutions with
overall net asset values and capacity utilization rates that
exceed or equal thresholds set annually by the Commission
and Council are the presumptive priority for new
facilities. If these projects do not replace an existing
facility, they would be included in the Program
Improvement category.”; and

On pages 10-11, section 5, by striking out all of
subdivision 5.6. and inserting in lieu thereof a new
subdivision 5.6., to read as follows: “A governing board
may not implement a campus development plan or plan
update that has not been confirmed by the Commission or
approved by the Council, as appropriate. The purchase
of any property for the construction of a facility that is
not included in the campus development plan creates an
update to the campus development plan that must be
confirmed by the Commission or approved by the
Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.”.

(s) The legislative rule filed in the State Register on July 2, 2018, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(t) The legislative rule filed in the State Register on September 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Acceptance of Advanced Placement Credit), is repealed.

(u) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (initial authorization of degree-granting institutions), is authorized.

(v) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants), is authorized.

(w) The legislative rule filed in the State Register on January 25, 2019, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is repealed.