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### Regular Session, 2019

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CHAPTER 136

(S. B. 673 - By Senators Rucker, Blair, Azinger, Cline, Maynard, Roberts, Romano, Stollings, Trump and Unger)

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

AN ACT to repeal §18B-1D-2, §18B-1D-3, §18B-1D-4, and §18B-1D-5 of the Code of West Virginia, 1931, as amended; to repeal §18B-7-8 of said code; to amend and reenact §18B-1D-1 and §18B-1D-8 of said code; and to amend and reenact §18C-1-1 of said code, all relating to public higher education accountability and planning; ensuring efficiency in planning and accountability; modifying the data collection and reporting processes; eliminating the requirement for a statewide master plan for public higher education; eliminating the requirement for state and institutional compacts for public higher education; eliminating the requirement for a human resources report card for public higher education; modifying the reporting methods for certain institutional and statewide reports; modifying the reporting method for the student financial aid report card for public higher education; and continuing the accountability system for public higher education.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-1. Master plan repealed; accountability system continued.

(a) The Legislature finds that:
(1) Accountability and strategic planning are valuable and necessary components of establishing and achieving goals for higher education in this state and fulfilling missions of the institutions;

(2) To be most effective and efficient, the accountability and strategic planning process should be coordinated, streamlined, and nonduplicative; and

(3) Redundant reporting requirements exist in the accountability and strategic planning process which serve to waste scarce resources and decrease efficiency.

(b) It is the intent of the Legislature that the accountability and strategic planning process for public higher education in this state continues in a unified and comprehensive manner while utilizing the resources of the higher education systems in an economical and efficient manner. To that end:

(1) The requirement for a statewide master plan for public higher education is repealed, and any provision of this code regarding the plan is void and of no effect;

(2) The requirements for state and institutional compacts for public higher education are repealed, and any provision of this code regarding the compacts are void and of no effect; and

(3) When collecting data from an institution, the commission and council first shall consider data generated from the unit-record student, registration, course and personnel files, the audited financial statements, and any source previously submitted formally to the commission or council from which the requested data may be obtained, so long as the data or information available through these sources reflects the most current reporting period.

§18B-1D-2. Definitions.

[Repealed.]
§18B-1D-3. State vision for public higher education; findings; establishment of objectives.

[Repealed.]


[Repealed.]

§18B-1D-5. Master plans; reports; approval process.

[Repealed.]

§18B-1D-8. Publication of institution and system data.

(a) The purpose of the institutional and statewide data reporting system is to make information available through the official websites of the commission and council to parents, students, faculty, staff, state policymakers, and the general public on the quality and performance of public higher education.

(b) The information provided through the reporting system shall be consistent and comparable between and among state institutions of higher education. If applicable, the information shall allow for easy comparison with higher education-related data collected and disseminated by the Southern Regional Education Board, the United States Department of Education and other education data-gathering and data-disseminating organizations upon which state policymakers frequently rely in setting policy.

(c) The rules required by this article shall provide for the collection, analysis, and dissemination of information on the performance of the state institutions of higher education, including health sciences education, in relation to the findings, goals, and objectives set forth in this article and §18B-1-1a of this code.
(1) The objective of this portion of the rule is to ensure that the Legislative Oversight Commission on Education Accountability and others identified in subsection (a) of this section are provided with full and accurate information while minimizing the institutional burden of recordkeeping and reporting.

(2) This portion of the rule shall identify various indicators of student and institutional performance that, at a minimum, must be reported annually, set forth general guidelines for the collection and reporting of data, and provide for the preparation and publication of the statewide data and reports.

The statewide annual report shall be analysis-driven, rather than simply data-driven, and shall present information in a format that can inform education policymaking. It shall outline significant trends, identify major areas of concern, and discuss progress toward meeting state and system goals and objectives. It shall be brief and concise, reporting required information in nontechnical language.

(d) The statewide data reporting system shall include the data for each separately listed, applicable indicator identified in the rule promulgated pursuant to subsection (c) of this section and the aggregate of the data for all public institutions of higher education.

(e) A statewide annual report shall be prepared using actual institutional, state, regional, and national data, as applicable and available, indicating the present performance of the individual institutions, the governing boards, and the state systems of higher education. The report shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case the year shall be clearly noted.

(f) The president or chief executive officer of each state institution of higher education shall prepare and submit
annually all requested data to the commission at the times established by the commission.

(g) The higher education central office staff, under the direction of the vice chancellor for administration, shall provide technical assistance to each institution and governing board in data collection and reporting and is responsible for assembling the statewide annual report from information submitted by each governing board.

(h) Current data shall be published to the statewide data reporting system prior to January 1 annually. The statewide annual report shall be completed and disseminated with copies to the Legislative Oversight Commission on Education Accountability prior to January 1 annually, and the staff of the commission and the council shall prepare a report highlighting specifically the trends, progress toward meeting goals and objectives, and major areas of concern for public higher education, including medical education, for presentation to the Legislative Oversight Commission on Education Accountability annually at the interim meetings in January.

(i) The Vice Chancellor for Administration shall make a digital copy of the statewide annual report available to the public for download from the official websites of the commission and council.

ARTICLE 7. PERSONNEL GENERALLY.
§18B-7-8. Reporting.

1 [Repealed.]

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.
§18C-1-1. Legislative findings; purpose; administration generally; reporting.
(a) The Legislature makes the following findings:

(1) Although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace, West Virginia has not developed sufficiently the state’s human talent and resources because many able, but needy, students are not able to finance a higher education program;

(2) The state can achieve its full economic and social potential only when the following elements are in place:

(A) Every individual has the opportunity to contribute to the full extent of his or her capability; and

(B) The state assists in removing financial barriers to the individual’s education goals that remain after he or she has used all resources and work opportunities available;

(b) The ultimate state goal in providing student financial aid is to create a culture that values education, to improve the quality of the workforce, and to enhance the quality of life for the citizens of West Virginia.

(c) The vice chancellor for administration has a ministerial duty to administer, oversee, and monitor all state and federal student financial aid programs administered at the state level in accordance with established rules under the direction of the commission and council and in consultation with the Higher Education Student Financial Aid Advisory Board.

(d) These programs include, but are not limited to, the following programs:

(1) The Guaranteed Student Loan Program, which may be administered by a private nonprofit agency;

(2) The Medical Student Loan Program;

(3) The Underwood-Smith Teacher Scholarship Program;
(4) The Engineering, Science and Technology Scholarship Program;

(5) The West Virginia Higher Education Grant Program;

(6) The Higher Education Adult Part-Time Student Grant Program;

(7) The West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program;

(8) The Higher Education Student Assistance Loan Program established pursuant to §18-22D-1 et seq. of this code;

(9) The West Virginia College Prepaid Tuition and Savings Program established pursuant to §18-30-1 et seq. of this code, which is administered by the State Treasurer;

(10) The state aid programs for students of optometry, pursuant to §18C-3-1 et seq. of this code;

(11) The state aid programs for students of veterinary medicine pursuant to §18-11-6a of this code;

(12) Any reciprocal program and contract program for student aid established pursuant to §18B-4-3 and §18B-4-4 of this code;

(13) Any other state-level student aid programs in this code; and

(14) Any federal grant or contract student assistance or support programs administered at the state level.

(e) Notwithstanding any provision of this chapter to the contrary, the Vice Chancellor for Administration shall publish comprehensive data to the official websites of the commission and council regarding the implementation of the financial aid programs identified in subsection (d) of this
section which are administered under his or her supervision. A concise summary report shall be provided to the commission and the council and shall be presented to the Legislative Oversight Commission on Education Accountability no later than January 1 annually. The report shall address all financial aid issues for which reports are required in this code, as well as any findings and recommendations.

CHAPTER 137
(H. B. 3020 - By Delegate Espinosa)

[Passed March 9, 2019; in effect ninety days from passage.] [Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §18B-5-3 of the Code of West Virginia, 1931, as amended, relating to the authority of the Higher Education Policy Commission, the Council for Community and Technical College Education, and institutional governing boards to enter into contracts for financial services; and providing for specified flexibility entering into agreements with certain affiliated nonprofit corporations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

(a) The governing boards, the commission, and the council are authorized and empowered to enter into contracts and expend funds for programs, services and facilities provided by public and private education institutions, associations, boards, agencies, consortia, corporations, partnerships, individuals and local, state and
federal governmental bodies within and outside of West Virginia in order that maximum higher education opportunities of high quality may be provided to the citizens of the state in the most economical manner. In no event may a contract for such services and facilities be entered into unless the commission, the council, or the governing boards have determined that such services and facilities are necessary and would be at a savings to the state.

(b) When a governing board, the commission, or the council determines that a contract for financial services is necessary and proper, it may enter into such a contract with an affiliated nonprofit corporation under such financial terms as the governing board, commission, or council determines are reasonable and proper in the sound administration of their financial responsibilities to the state. In so doing, the affiliated nonprofit corporation shall be deemed a sole source in respect to any applicable law or regulation relating to expenditures of public funds.

(c) As used in this section, “affiliated nonprofit corporation” means a West Virginia nonprofit, nonstock corporation which:

(1) Is organized as for charitable, educational, and scientific purposes, or for similar purposes;

(2) Is recognized by the Internal Revenue Service as a Section 501(c)3, or successor provision of federal law, tax-exempt organization;

(3) Is organized solely to support and contribute to the respective institution of higher education, or to the commission, or to the council, as applicable; and

(4) Has annually independently audited financial statements, which have been included and presented, for at least the preceding five fiscal years, in the audited financial statements of the respective governing board, or of the respective institution of higher education under the authority of a governing board, or of the commission or council.
AN ACT to amend and reenact §9-7-1, §9-7-3, §9-7-6, and §9-7-6a of the Code of West Virginia, 1931, as amended, all relating to transferring the Medicaid Fraud Control Unit to the Office of the Attorney General; establishing an effective date the Medicaid Fraud Control Unit will transfer to the Office of the Attorney General; establishing the Legislative Auditor to deliver a report on the performance of the Medicaid Fraud Control Unit; establishing investigation powers with the Attorney General; establishing the Secretary of the Department of Health and Human Resources may share documents with the Attorney General; establishing persons able to maintain a civil action; and establishing liability limits for employees acting in good faith.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-7-1. Legislative purpose and findings; powers and duties of fraud control unit; transfer to the Office of the Attorney General; legislative report.

(a) It is the purpose of the Legislature to continue the Medicaid Fraud Control Unit previously established within the West Virginia Department of Health and Human Resources and to provide it with the responsibility and
authority for investigating and controlling fraud and abuse of the medical programs of the state Department of Health and Human Resources which have been established pursuant to §9-4-2 of this code: Provided, That effective October 1, 2019, the Medicaid Fraud Control Unit shall be transferred to the Office of the Attorney General pursuant to subsection (c) of this section. It is the finding of the Legislature that substantial sums of money have been lost to the state and federal government in the operation of the medical programs of the state due to the overpayment of moneys to medical providers. Such overpayments have been the result of both the abuse of and fraud in the reimbursement process.

(b) The Medicaid Fraud Control Unit shall have the following powers and duties:

(1) The investigation and referral for prosecution of all violations of applicable state and federal laws pertaining to the provision of goods or services under the medical programs of the state including the Medicaid program.

(2) The investigation of abuse, neglect, or financial exploitation of residents in board and care facilities and patients in health care facilities which receive payments under the medical programs of the state.

(3) To cooperate with the federal government in all programs designed to detect and deter fraud and abuse in the medical programs of the state.

(4) To employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors, and clerical support personnel and such other personnel as are deemed necessary from time to time to accomplish the purposes herein.

(c) Effective October 1, 2019, the Medicaid Fraud Control Unit shall be transferred to the Office of the Attorney General. All rights, responsibilities, powers, and duties of the unit shall be transferred to the Office of the
Attorney General, including the administration and authority of the Medicaid Fraud Control Fund. All employees of the Medicaid Fraud Control Unit shall be transferred to and become employees of the Office of the Attorney General at their existing hourly rate or salary and with all accrued benefits. The Medicaid Fraud Control Unit’s authorities, powers, and duties shall remain unchanged by this subsection.

(d) On or before December 31, 2022, the Legislative Auditor shall study and report to the Joint Committee on Government and Finance on the performance of the Medicaid Fraud Control Unit within the Office of the Attorney General during the previous three years compared to the performance of the unit while it was established within the Department of Health and Human Resources.

§9-7-3. Investigations; procedure.

(a) When the unit has credible information that indicates a person has engaged in an act or activity which is subject to prosecution under this article, the unit may make an investigation to determine if the act has been committed and, to the extent necessary for such purpose, the Attorney General, or an employee of the unit designated by the Attorney General, may administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition, and location of any book, record, documents, or other tangible thing and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

When the unit has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution under this article, or §61-2-29 of this code, either before, during, or after an investigation pursuant to this section, the Attorney General, or an employee of the unit designated by the Attorney General, may request search
warrants and present and swear or affirm criminal complaints.

(b) If documents necessary to an investigation of the unit shall appear to be located outside the state, the documents shall be made available by the person or entity within the jurisdiction of the state having control over the documents either at a convenient location within the state or, upon payment of reasonable and necessary expenses to the unit for transportation and inspection, at the place outside the state where the documents are maintained.

(c) Upon failure of a person to comply with a subpoena or subpoena duces tecum or failure of a person to give testimony without lawful excuse and upon reasonable notice to all persons affected thereby, the unit may apply to the circuit court of the county in which compliance is sought for appropriate orders to compel obedience with the provisions of this section.

(d) The unit shall not make public the name or identity of a person whose acts or conduct is investigated pursuant to this section or the facts disclosed in such investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this article or any other provision of this code.

(e) Beginning on October 1, 2019, the secretary and the Department of Health and Human Resources shall fully cooperate with the Office of the Attorney General on any investigation, prosecution, or civil action conducted pursuant to this article. The secretary shall promptly provide the Attorney General with any information or document requested for the purposes of carrying out this article, to the extent permitted under federal law.

(f) Prior to October 1, 2019, the secretary and the Department of Health and Human Resources shall fully cooperate with and assist the Office of the Attorney General
§9-7-6. Civil remedies; statute of limitations.

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

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

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

(d) Any civil action brought under this section shall be brought within five years from the time the false, fraudulent, or fictitious claim was made. Claims will be judged based on the Medicaid or program rules in existence at the time of the claim submission.
§9-7-6a. Liability of employees of the Department of Health and Human Resources; Office of the Attorney General.

There shall be no civil liability on the part of, and no cause of action shall arise against the Department of Health and Human Resources, the Office of the Attorney General, or employees or agents of the aforementioned for any action taken by them in good faith and in the lawful performance of their powers and duties under this article.

CHAPTER 139

(Com. Sub. for S. B. 564 - By Senators Takubo, Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Prezioso, Romano, Stollings, Unger and Hamilton)

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

AN ACT to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-5-12 of said code, all relating to expanding certain insurance coverages for pregnant women; expanding who is eligible to receive certain Medicaid services; expanding who is eligible to receive certain services through the Children’s Health Insurance Program; providing the minimum services are to be covered; and providing an effective date.

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 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-6d. Modified benefit plan implementation.

(a) Upon approval by the Centers for Medicare and Medicaid Services, the board shall implement a benefit plan for uninsured children of families with income between 200 and 300 hundred percent of the federal poverty level.

(b) The benefit plans offered pursuant to this section shall include services determined to be appropriate for children, but may vary from those currently offered by the board.

(c) The board shall structure the benefit plans for this expansion to include premiums, coinsurance or copays, and deductibles. The board shall develop the cost-sharing features in such a manner as to keep the program fiscally stable without creating a barrier to enrollment. Such features may include different cost-sharing features within this group based upon the percentage of the federal poverty level.

(d) Provider reimbursement schedules shall be no lower than the reimbursement provided for the same services under the plans offered in §5-16-1 et seq. of this code.

(e) The board shall create a benefit plan for comprehensive coverage for pregnant women between 185 percent and 300 percent of the federal poverty level including prenatal care, delivery, and 60 days postpartum care under authorization of the Title XXI of the Social Security Act of 1997, 42 U.S.C. § 1397II, and as funding is available after all children up to 300 percent of the federal poverty level are covered.

(f) All provisions of this article are applicable to this expansion unless expressly addressed in this section.
(g) Nothing in this section may be construed to require any appropriation of state General Revenue Funds for the payment of any benefit provided pursuant to this section, except for the state appropriation used to match the federal financial participation funds. In the event that federal funds are no longer authorized for participation by individuals eligible at income levels above 200 percent, the board shall take immediate steps to terminate the expansion provided for in this section and notify all enrollees of such termination. In the event federal appropriations decrease for the programs created pursuant to Title XXI of the Social Security Act of 1997, the board is directed to make those decreases in this expansion program before making changes to the programs created for those children whose family income is less than 200 percent of the federal poverty level.

(h) The board is directed to report no less than quarterly to the Legislative Oversight Commission on Health and Human Resources Accountability on the development, implementation, and progress of the expansion authorized in this section.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12. Medicaid program; maternity and infant care.

(a) The Legislature finds that high rates of infant mortality and morbidity are costly to the state in terms of human suffering and of expenditures for long-term institutionalization, special education, and medical care. It is well documented that appropriate care during pregnancy and delivery can prevent many of the expensive, disabling problems our children experience. There exists a crisis in this state relating to the availability of obstetrical services, particularly to patients in rural areas, and to the cost patients must pay for obstetrical services. The availability of obstetrical service for Medicaid patients enables these patients to receive quality medical care and to give birth to
healthier babies and, consequently, improve the health status of the next generation.

The Legislature further recognizes that public and private insurance mechanisms remain inadequate, and poor and middle income women and children are among the most likely to be without insurance. Generally, low-income, uninsured children receive half as much health care as their insured counterparts. The state is now investing millions to care for sick infants whose deaths and disabilities could have been avoided.

It is the intent of the Legislature that the Department of Health and Human Resources participate in the Medicaid program for indigent children and pregnant women established by Congress under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-504, and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203.

(b) The department shall:

(1) Extend Medicaid coverage to pregnant women and their newborn infants to 185 percent of the federal poverty level and to provide coverage up to 60 days postpartum care, effective July 1, 2019, or as soon as federal approval has occurred.

(2) As provided under COBRA, SOBRA, and OBRA, effective July 1, 1988, infants shall be included under Medicaid coverage with all children eligible for Medicaid coverage born on or after October 1, 1983, whose family incomes are at or below 100 percent of the federal poverty level and continuing until such children reach the age of eight years.

(3) Elect the federal options provided under COBRA, SOBRA, and OBRA impacting pregnant women and children below the poverty level: Provided, That no provision in this article shall restrict the department in
exercising new options provided by or to be in compliance
with new federal legislation that further expands eligibility
for children and pregnant women.

(4) The department shall be responsible for the
implementation and program design for a maternal and infant
health care system to reduce infant mortality in West Virginia.
The health system design shall include quality assurance
measures, case management, and patient outreach activities.
The department shall assume responsibility for claims
processing in accordance with established fee schedules and
financial aspects of the program necessary to receive available
federal dollars and to meet federal rules and regulations.

(5) Beginning July 1, 1988, the department shall
increase to no less than $600 the reimbursement rates under
the Medicaid program for prenatal care, delivery, and post-
partum care.

(c) In order to be in compliance with the provisions of
OBRA through rules and regulations, the department shall
ensure that pregnant women and children whose incomes
are above the Aid to Families and Dependent Children
(AFDC) payment level are not required to apply for
entitlements under the AFDC program as a condition of
eligibility for Medicaid coverage. Further, the department
shall develop a short, simplified pregnancy/pediatric
application of no more than three pages, paralleling the
simplified OBRA standards.

(d) Any woman who establishes eligibility under this
section shall continue to be treated as an eligible individual
without regard to any change in income of the family of
which she is a member until the end of the 60-day period
beginning on the last day of her pregnancy.

(e) No later than July 1, 2016, the department shall seek
a waiver of the requirements that all women seek 30-day
approval from the federal Center for Medicare and
Medicaid Services prior to receiving a tubal ligation.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-3a, relating to exercising authority to exempt individuals domiciled within the state from certain restrictions contained in federal law and exempting persons convicted of certain offenses from the prohibition against receiving supplemental nutrition assistance program benefits.

Be it enacted by the Legislature of West Virginia:

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

§9-2-3a. Authorized exemption from federal law; exceptions.

Pursuant to the authority and option granted by 21 U.S.C. §862a(d)(1)(A) to the states, West Virginia exempts all individuals domiciled within the state from the application of 21 U.S.C. §862a(a)(2) unless the offense of conviction has as an element thereof misuse of supplemental nutrition assistance program benefits, loss of life, or the causing of physical injury.
CHAPTER 141


[Passed February 19, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2019.]

AN ACT to amend and reenact §9-6-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-809 of said code, all relating to mandatory reporting procedures of abuse and neglect of adults and children.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-11. Reporting procedures.

(a) A report of neglect or abuse of an incapacitated adult or facility resident or of an emergency situation involving such an adult shall be made immediately to the department’s adult protective services agency by a method established by the department: Provided, That if the method for reporting is web-based, the Department of Health and Human Resources shall maintain a system for addressing emergency situations that require immediate attention and shall be followed by a written report by the complainant or the receiving agency within 48 hours. The department shall, upon receiving any such report, take such action as may be appropriate and shall maintain a record thereof. The department shall receive telephonic reports on its 24-hour, seven-day-a-week, toll-free number established to receive calls reporting cases of suspected or known adult abuse or neglect.
(b) A copy of any report of abuse, neglect, or emergency situation shall be immediately filed with the following agencies:

1. The Department of Health and Human Resources;
2. The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or
3. In case of a death, to the appropriate medical examiner or coroner’s office.

(c) If the person who is alleged to be abused or neglected is a resident of a nursing home or other residential facility, a copy of the report shall also be filed with the state or regional ombudsman and the administrator of the nursing home or facility.

(d) The department shall omit from such report in the first instance, the name of the person making a report, when requested by such person.

(e) Reports of known or suspected institutional abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation in an institution, nursing home, or other residential facility shall be made, received, and investigated in the same manner as other reports provided for in this article. In the case of a report regarding an institution, nursing home, or residential facility, the department shall immediately cause an investigation to be conducted.

(f) Upon receipt of a written complaint, the department shall coordinate an investigation pursuant to §9-6-3 of this code and applicable state or federal laws, rules, or regulations.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-809. Reporting procedures.
(a) Reports of child abuse and neglect pursuant to this article shall be made immediately to the department of child protective services by a method established by the department: Provided, That if the method for reporting is web-based, the Department of Health and Human Resources shall maintain a system for addressing emergency situations that require immediate attention and shall be followed by a written report within 48 hours if so requested by the receiving agency. The state department shall establish and maintain a 24-hour, seven-day-a-week telephone number to receive calls reporting suspected or known child abuse or neglect.

(b) A copy of any report of serious physical abuse, sexual abuse, or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney, or the coroner or medical examiner’s office. All reports under this article are confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

CHAPTER 142

(Com. Sub. for S. B. 30 - By Senators Blair and Cline)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §33-3-15 of the Code of West Virginia, 1931, as amended, relating to eliminating taxation on annuity considerations collected and received by a life insurer.

Be it enacted by the Legislature of West Virginia:
ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURERS.

§33-3-15. Annuity tax

(a) For the taxable years beginning on or after January 1, 2021, the tax imposed by this section is discontinued.

(b) Every life insurer transacting insurance in West Virginia shall make a return to the commissioner annually on a form prescribed by the commissioner, on or before March 1, under the oath of its president or secretary, of the gross amount of annuity considerations collected and received by it during the previous calendar year on its annuity business transacted in this state and stating the amount of tax due under this section, together with payment in full for the tax due. The tax is the sum equal to one per centum of the gross amount of the annuity considerations, less annuity considerations returned and less termination allowances on group annuity contracts. All the taxes received by the commissioner shall be paid into the insurance tax fund created in §33-3-14(b) of this code. In the case of funds accepted by a life insurer under an agreement which provides for an accumulation of money to purchase annuities at future dates, annuity considerations may be either considered by the life insurer to be collected and received upon receipt or upon actual application to the purchase of annuities. Any earnings credited to money accumulated while under the latter alternative will also be considered annuity considerations. For purposes of this election, the alternative which the life insurer elected to file its tax return for the 2001 tax year or which it elects when it enters the state, whichever is later, shall be considered the life insurer’s election between these alternatives. A life insurer filing a year 2001 tax return shall provide written notice to the commissioner of its election within 90 days of the effective date of this enactment. Otherwise, a life insurer shall provide written notice to the commissioner of its election within 90 days after it enters the state. Thereafter, a life insurer may not change its election without the consent of the Insurance Commissioner. The Insurance Commissioner may develop forms to assure compliance with this subsection.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-39, relating to dental insurance plans; defining terms; prohibiting insurers from requiring dentists to provide a discount on noncovered services; prohibiting dentists from charging covered persons more for noncovered services than his or her customary or usual rate for the services; providing that insurers may not provide for a nominal reimbursement for a service in order to claim that the service or material is covered; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-39. Prohibitions related to dental insurance plans, agreements, charges, and reimbursements; definitions.

(a) For purposes of this section:

“Covered services” means dental care services for which reimbursement is available under an enrollee’s plan contract, or for which reimbursement would be available but for the application of contractual limitations such as deductibles, copayments, coinsurance, waiting periods, annual or lifetime maximum, frequency limitations, alternative benefit payments, or any other limitation.
“Contractual discount” means a percentage reduction from the provider’s usual and customary rate for covered dental services and materials required under a participating provider agreement.

“Dental plan” includes any policy of insurance which is issued by a health care service contractor which provides for coverage of dental services not in connection with a medical plan.

“Materials” includes, but is not limited to, any material or device utilized within the scope of practice by a licensed dentist.

(b) No contract of any health care service contractor that covers any dental services, and no contract or participating provider agreement with a dentist may require, directly or indirectly, that a dentist who is a participating provider, provide services to an enrolled participant at a fee set by, or a fee subject to the approval of, the health care services contractor unless the dental services are covered services.

(c) A health care service contractor or other person providing third-party administrator services shall not make available any providers in its dental network to a plan that sets dental fees for any services except covered services.

(d) A dentist may not charge more for services and materials that are noncovered services under a dental benefits policy than his or her usual and customary fee for those services and materials.

(e) Reimbursement paid by a dental plan for covered services and materials shall be reasonable and may not provide nominal reimbursement in order to claim that services and materials are covered services.

(f) This section applies to dental plans, contracts, and participating provider agreements which take effect or are renewed on or after July 1, 2019.
AN ACT to amend and reenact §33-17A-3 and §33-17A-4 of the Code of West Virginia, 1931, as amended, all relating to clarifying notification requirements for property insurance purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION, AND DISCLOSURE.

§33-17A-3. Definitions.

(a) “Declination” is the refusal of an insurer to issue a property insurance policy on a written application or written request for coverage. For the purposes of this article, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the application or written request for coverage, or the offering of insurance upon different terms than requested in the application or written request for coverage, is not considered a declination if such offering of such insurance is based upon any valid underwriting reason which involves a substantial increase in the risk. Each company or groups of companies instituting such transfer shall give notice in the manner provided in §33-17A-4(c) of this code to the insured as to the reasons for such transfer.

(b) “Nonpayment of premium” means the failure of the named insured to discharge any obligation in connection with the payment of premiums on policies of property
insurance, subject to this article, whether the payments are
directly payable to the insurer or its agent or indirectly
payable to the insurer or its agent or indirectly payable under
a premium finance plan or extension of credit.
“Nonpayment of premium” includes the failure to pay dues
or fees where payment of dues or fees is a prerequisite to
obtaining or continuing property insurance coverage.

(c) “Renewal” or “to renew” means the issuance and
delivery by an insurer at the end of a policy period of a
policy superseding a policy previously issued and delivered
by the same insurer, or the issuance and delivery of a
certificate or notice extending the term of an existing policy
beyond its policy period or term. For the purpose of this
article, any policy period or term of less than six months is
considered a policy period or term of six months, and any
policy period or term of more than one year or any policy
with no fixed expiration date is considered a policy period
or term of one year.

(d) “Termination” means either a cancellation or
nonrenewal of property insurance coverage in whole or in
part. A cancellation occurs during the policy term. A
nonrenewal occurs at the end of the policy term as set forth
in §33-17A-3(c) of this code.

(1) For purposes of this article, the transfer of a
policyholder between companies within the same insurance
group is not considered a termination, if such transfer is
based upon any valid underwriting reason which involves a
substantial increase in the risk.

(2) Requiring a reasonable deductible, reasonable
changes in the amount of insurance, or reasonable
reductions in policy limits or coverage is not considered a
termination if the requirements are directly related to the
hazard involved and are made on the renewal date of the
policy.
§33-17A-4. Notification and reasons for a transfer, declination, termination, or renewal with reduction in coverage.

(a) Upon declining to insure any real or personal property, subject to this article, the insurer making a declination shall provide the insurance applicant with a written explanation of the specific reason or reasons for the declination at the time of the declination. The provision of such insurance application form by an insurer shall create no right to coverage on behalf of the insured to which the insured is not otherwise entitled.

(b) A notice of cancellation of property insurance coverage by an insurer shall be in writing, shall be delivered to the named insured or sent by first class mail to the named insured at the last known address of the named insured, shall state the effective date of the cancellation, and shall be accompanied by a written explanation of the specific reason or reasons for the cancellation.

(c) At least 30 days before the end of a policy period, as described in §33-17A-3(c) of this code, an insurer shall deliver or send by first class mail to the named insured at the last known address of the named insured, notice of its intention regarding the renewal of the property insurance policy.

(1) Notice of an intention not to renew a property insurance policy shall be accompanied by an explanation of the specific reasons for the nonrenewal: Provided, That no insurer shall fail to renew an outstanding property insurance policy which has been in existence for four years or longer except for the reasons as set forth in §33-17A-5 of this code, or for other valid underwriting reasons which involve a substantial increase in the risk: Provided, however, That notwithstanding any other provision of this article, no property insurance coverage policy in force for at least four years, may be denied renewal or canceled solely as a result of:
(A) A single first party property damage claim within the previous 36 months and that arose from wind, hail, lightning, wildfire, snow, or ice, unless the insurer has evidence that the insured unreasonably failed to maintain the property and that failure to maintain the property contributed to the loss; or

(B) Two first party property damage claims within the previous 12 months, both of which arose from claims solely due to an event for which a state of emergency is declared for the county in which the insured property is located, unless the insurer has evidence that the insured unreasonably failed to maintain the property and that failure to maintain the property contributed to the loss. “State of emergency” means the situation existing after the occurrence of a disaster in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code or in which a major disaster declaration or emergency declaration has been issued by the President of the United States pursuant to the provisions of 42 U. S. C. §5122.

(2) Notice of an intention to transfer a policyholder between companies within the same insurance group as provided in §33-17A-3(d)(1) of this code shall be given by each company or group of companies instituting such transfer and shall be accompanied by an explanation of the reasons for such transfer.

(3) Notice of an intention to renew a property insurance policy with a new policy that includes changes made by the insurer, which result in a removal of coverage, diminution in the scope or reduction in coverage, change in deductible, or addition of an exclusion, shall be accompanied by an explanation of the changes made by the insurer. This subdivision does not apply to any change, reduction, or elimination of coverage made at the request of the insured, any correction of typographical or scrivener’s errors, or the application of mandated legislative changes.
AN ACT to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-51-3, §33-51-4, §33-51-7, §33-51-8, and §33-51-9 of said code; and to amend said code by adding thereto a new section, designated §33-51-10, all relating to the regulation of pharmacy benefit managers; defining terms; requiring pharmacy benefit managers to obtain a license from the Insurance Commissioner before doing business in the state; setting forth terms of licensure of pharmacy benefit managers; establishing fees; authorizing the Insurance Commissioner to promulgate rules for legislative approval; providing network adequacy standards; prohibiting a network to be comprised only of mail-order benefits; requiring the Insurance Commissioner to enforce the licensure provisions relating to pharmacy benefit managers; providing for the applicability of provisions to pharmacy benefit managers; clarifying that requirements do not apply to certain prescription drug plans; prohibiting certain practices by an auditing entity; providing exemptions; prohibiting different treatment of a federal 340B drug discount program; requiring the reporting of certain data relating to the payment of pharmacy claims; permitting the Public Employees Insurance Agency to cancel a contract if certain conditions are not met; providing disciplinary procedures; and providing civil 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

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

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

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein provided shall include coverages and benefits for x-ray and laboratory services in connection with mammogram and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age 50 and over. Such benefits shall include, but not be limited to, the following:
(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force;

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

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

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

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

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

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

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

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

(ii) Severe food protein-induced enterocolitis syndrome;

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

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

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

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

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

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

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

(e) The provisions of §5A-3-1 et seq. of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired: Provided, That the director shall negotiate and contract directly with health care providers and other entities, organizations and vendors in order to secure competitive premiums, prices, and other financial advantages. The director shall deal directly with insurers or health care providers and other entities, organizations, and vendors in presenting specifications and
receiving quotations for bid purposes. No commission or finder’s fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies’ contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies:

*Provided, however,* That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company, or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field, and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries, or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article.

Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical, or life and accidental death insurance coverage.

(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

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

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

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

(j) The director shall include language in all contracts for pharmacy benefits management, as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report quarterly to the agency for all pharmacy claims the amount paid to the pharmacy provider per claim, including, but not limited to, the following:

(1) The cost of drug reimbursement;

(2) Dispensing fees;
(3) Copayments; and

(4) The amount charged to the agency for each claim by the pharmacy benefit manager.

In the event there is a difference between these amounts for any claim, the pharmacy benefit manager shall report an itemization of all administrative fees, rebates, or processing charges associated with the claim. All data and information provided by the pharmacy benefit manager shall be kept secure, and notwithstanding any other provision of this code to the contrary, the agency shall maintain the confidentiality of the proprietary information and not share or disclose the proprietary information contained in the report or data collected with persons outside the agency. All data and information provided by the pharmacy benefit manager shall be considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code. Only those agency employees involved in collecting, securing, and analyzing the data for the purpose of preparing the report provided for herein shall have access to the proprietary data. The director shall, using aggregated, non-proprietary data only, report at least quarterly to the Joint Committee on Government and Finance on the implementation of this subsection and its impact on program expenditures, including any difference or spread between the amount paid by pharmacy benefit managers to the pharmacy providers and the amount charged to the agency for each claim by the pharmacy benefit manager.

(k) If the information required herein is not provided, the agency may terminate the contract with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline the pharmacy benefit manager as provided in §33-51-8(e) of this code.

CHAPTER 33. INSURANCE.

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.

For purposes of this article:

“340B entity” means an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. § 256b, including its pharmacy or pharmacies, or any pharmacy or pharmacies, contracted with the participating entity to dispense drugs purchased through such program.

“Affiliate” means a pharmacy, pharmacist, or pharmacy technician that directly or indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefit manager.

“Auditing entity” means a person or company that performs a pharmacy audit, including a covered entity, pharmacy benefits manager, managed care organization, or third-party administrator.

“Business day” means any day of the week excluding Saturday, Sunday, and any legal holiday as set forth in §2-2-1 of this code.

“Claim level information” means data submitted by a pharmacy or required by a payer or claims processor to adjudicate a claim.

“Covered entity” means a contract holder or policy holder providing pharmacy benefits to a covered individual under a health insurance policy pursuant to a contract administered by a pharmacy benefits manager.

“Covered individual” means a member, participant, enrollee, or beneficiary of a covered entity who is provided health coverage by a covered entity, including a dependent or other person provided health coverage through the policy or contract of a covered individual.
“Extrapolation” means the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors on any portion of claims submitted, based on the frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors actually measured in a sample of claims.

“Health care provider” has the same meaning as defined in §33-41-2 of this code.

“Health insurance policy” means a policy, subscriber contract, certificate, or plan that provides prescription drug coverage. The term includes both comprehensive and limited benefit health insurance policies.

“Insurance commissioner” or “commissioner” has the same meaning as defined in §33-1-5 of this code.

“Network” means a pharmacy or group of pharmacies that agree to provide prescription services to covered individuals on behalf of a covered entity or group of covered entities in exchange for payment for its services by a pharmacy benefits manager or pharmacy services administration organization. The term includes a pharmacy that generally dispenses outpatient prescriptions to covered individuals or dispenses particular types of prescriptions, provides pharmacy services to particular types of covered individuals or dispenses prescriptions in particular health care settings, including networks of specialty, institutional or long-term care facilities.

“Nonproprietary drug” means a drug containing any quantity of any controlled substance or any drug which is required by any applicable federal or state law to be dispensed only by prescription.

“Pharmacist” means an individual licensed by the West Virginia Board of Pharmacy to engage in the practice of pharmacy.
“Pharmacy” means any place within this state where drugs are dispensed and pharmacist care is provided.

“Pharmacy audit” means an audit, conducted on-site by or on behalf of an auditing entity of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a covered individual.

“Pharmacy benefits management” means the performance of any of the following:

1. The procurement of prescription drugs at a negotiated contracted rate for dispensation within the State of West Virginia to covered individuals;

2. The administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals;

3. The administration of pharmacy benefits, including:
   a. Operating a mail-service pharmacy;
   b. Claims processing;
   c. Managing a retail pharmacy network;
   d. Paying claims to a pharmacy for prescription drugs dispensed to covered individuals via retail or mail-order pharmacy;
   e. Developing and managing a clinical formulary including utilization management and quality assurance programs;
   f. Rebate contracting administration; and
   g. Managing a patient compliance, therapeutic intervention, and generic substitution program.
“Pharmacy benefits manager” means a person, business, or other entity that performs pharmacy benefits management for covered entities;

“Pharmacy record” means any record stored electronically or as a hard copy by a pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy services or other component of pharmacist care that is included in the practice of pharmacy.

“Pharmacy services administration organization” means any entity that contracts with a pharmacy to assist with third-party payer interactions and that may provide a variety of other administrative services, including contracting with pharmacy benefits managers on behalf of pharmacies and managing pharmacies’ claims payments from third-party payers.

“Third party” means any insurer, health benefit plan for employees which provides a pharmacy benefits plan, a participating public agency which provides a system of health insurance for public employees, their dependents and retirees, or any other insurer or organization that provides health coverage, benefits, or coverage of prescription drugs or as part of workers’ compensation insurance in accordance with state or federal law. The term does not include an insurer that provides coverage under a policy of casualty or property insurance.


(a) An entity conducting a pharmacy audit under this article shall conform to the following rules:

(1) Except as otherwise provided by federal or state law, an auditing entity conducting a pharmacy audit may have access to a pharmacy’s previous audit report only if the report was prepared by that auditing entity.

(2) Information collected during a pharmacy audit is confidential by law, except that the auditing entity
conducting the pharmacy audit may share the information with the pharmacy benefits manager and with the covered entity for which a pharmacy audit is being conducted and with any regulatory agencies and law-enforcement agencies as required by law.

(3) The auditing entity conducting a pharmacy audit may not compensate an employee or contractor with which an auditing entity contracts to conduct a pharmacy audit solely based on the amount claimed or the actual amount recouped by the pharmacy being audited.

(4) The auditing entity shall provide the pharmacy being audited with at least 14 calendar days’ prior written notice before conducting a pharmacy audit unless both parties agree otherwise. If a delay of the audit is requested by the pharmacy, the pharmacy shall provide notice to the pharmacy benefits manager within 72 hours of receiving notice of the audit.

(5) The auditing entity may not initiate or schedule a pharmacy audit without the express consent of the pharmacy during the first five business days of any month for any pharmacy that averages in excess of 600 prescriptions filled per week.

(6) The auditing entity shall accept paper or electronic signature logs that document the delivery of prescription or nonproprietary drugs and pharmacist services to a health plan beneficiary or the beneficiary’s caregiver or guardian.

(7) Prior to leaving the pharmacy after the on-site portion of the pharmacy audit, the auditing entity shall provide to the representative of the pharmacy a complete list of pharmacy records reviewed.

(8) A pharmacy audit that involves clinical judgment shall be conducted by, or in consultation with, a pharmacist.

(9) A pharmacy audit may not cover:
(A) A period of more than 24 months after the date a claim was submitted by the pharmacy to the pharmacy benefits manager or covered entity unless a longer period is required by law; or

(B) More than 250 prescriptions: Provided, That a refill does not constitute a separate prescription for the purposes of this subparagraph.

(10) The auditing entity may not use extrapolation to calculate penalties or amounts to be charged back or recouped unless otherwise required by federal requirements or federal plans.

(11) The auditing entity may not include dispensing fees in the calculation of overpayments unless a prescription is considered a misfill. As used in this subdivision, “misfill” means a prescription that was not dispensed, a prescription error, a prescription where the prescriber denied the authorization request, or a prescription where an extra dispensing fee was charged.

(12) The auditing entity conducting a pharmacy audit or person acting on behalf of the auditing entity may not seek any fee, charge-back, recoupment, or other adjustment for a dispensed product, or any portion of a dispensed product, unless one of the following has occurred:

(A) Fraud or other intentional and willful misrepresentation as evidenced by a review of the claims data, statements, physical review, or other investigative methods;

(B) Dispensing in excess of the benefit design, as established by the plan sponsor;

(C) Prescriptions not filled in accordance with the prescriber’s order; or

(D) Actual overpayment to the pharmacy.
(13) Any fee, charge-back, recoupment, or other adjustment is limited to the actual financial harm associated with the dispensed product, or portion of the dispensed product, or the actual underpayment or overpayment as set forth in the criteria in subdivision (12) of this subsection.

(14) A pharmacy may do any of the following when a pharmacy audit is performed:

(A) A pharmacy may use authentic and verifiable statements or records, including, but not limited to, medication administration records of a nursing home, assisted living facility, hospital, or health care provider with prescriptive authority, to validate the pharmacy record and delivery; and

(B) A pharmacy may use any valid prescription, including, but not limited to, medication administration records, facsimiles, electronic prescriptions, electronically stored images of prescriptions, electronically created annotations, or documented telephone calls from the prescribing health care provider or practitioner’s agent, to validate claims in connection with prescriptions or changes in prescriptions or refills of prescription or nonproprietary drugs. Documentation of an oral prescription order that has been verified by the prescribing health care provider shall meet the provisions of this subparagraph for the initial audit review.

(b) An auditing entity shall provide the pharmacy with a written report of the pharmacy audit and comply with the following requirements:

(1) A preliminary pharmacy audit report shall be delivered to the pharmacy or its corporate parent within 60 calendar days after the completion of the pharmacy audit. The preliminary report shall include contact information for the auditing entity that conducted the pharmacy audit and an appropriate and accessible point of contact, including telephone number, facsimile number, e-mail address, and
auditing firm name and address so that audit results, procedures and any discrepancies can be reviewed. The preliminary pharmacy audit report shall include, but not be limited to, claim level information for any discrepancy found and total dollar amounts of claims subject to recovery.

(2) A pharmacy is allowed at least 30 calendar days following receipt of the preliminary audit report to respond to the findings of the preliminary report.

(3) A final pharmacy audit report shall be delivered to the pharmacy or its corporate parent no later than 90 calendar days after completion of the pharmacy audit. The final pharmacy audit report shall include any response provided to the auditing entity by the pharmacy or corporate parent and shall consider and address such responses.

(4) The final audit report may be delivered electronically.

(5) A pharmacy may not be subject to a charge-back or recoupment for a clerical or recordkeeping error in a required document or record, including a typographical or computer error, unless the error resulted in overpayment to the pharmacy.

(6) An auditing entity conducting a pharmacy audit or person acting on behalf of the entity may not charge-back, recoup, or collect penalties from a pharmacy until the time to file an appeal of a final pharmacy audit report has passed or the appeals process has been exhausted, whichever is later.

(7) If an identified discrepancy in a pharmacy audit exceeds $25,000, future payments to the pharmacy in excess of that amount may be withheld pending adjudication of an appeal.
(8) No interest accrues for any party during the audit period, beginning with the notice of the pharmacy audit and ending with the conclusion of the appeals process.

(9) Except for Medicare claims, approval of drug, prescriber, or patient eligibility upon adjudication of a claim may not be reversed unless the pharmacy or pharmacist obtained adjudication by fraud or misrepresentation of claims elements.

§33-51-7. Pharmacy benefits manager and auditing entity registration.

(a) Prior to conducting business in the State of West Virginia, except as provided in subsection (d) of this section, an auditing entity shall register with the Insurance Commissioner. The commissioner shall make an application form available on its publicly accessible Internet website that includes a request for the following information:

1. The identity, address, and telephone number of the applicant;
2. The name, business address, and telephone number of the contact person for the applicant; and
3. When applicable, the federal employer identification number for the applicant.

(b) Term and fee. —

1. The term of registration shall be two years from the date of issuance.

2. The Insurance Commissioner shall determine the amount of the initial application fee and the renewal application fee for the registration. Such fee shall be submitted by the applicant with an application for registration. An initial application fee is nonrefundable. A
renewal application fee shall be returned if the renewal of
the registration is not granted.

(3) The amount of the initial application fees and
renewal application fees must be sufficient to fund the
Insurance Commissioner's duties in relation to its
responsibilities under this article, but a single fee may not
exceed $1,000.

(c) Registration. —

(1) The Insurance Commissioner shall issue a
registration, as appropriate, to an applicant when the
Insurance Commissioner determines that the applicant has
submitted a completed application and paid the required
registration fee.

(2) The registration may be in paper or electronic form,
is nontransferable, and shall prominently list the expiration
date of the registration.

(d) Duplicate registration. —

(1) A licensed insurer or other entity licensed by the
commissioner pursuant to this chapter shall comply with the
standards and procedures of this article but is not required
to separately register as an auditing entity.

(2) A pharmacy benefits manager that is registered as a
third-party administrator pursuant to §33-46-1 et seq. of this
code shall comply with the standards and procedures of this
article but is not required to register separately as an
auditing entity.

§33-51-8. Licensure of pharmacy benefit managers.

(a) A person or organization may not establish or
operate as a pharmacy benefits manager in the State of West
Virginia without first obtaining a license from the Insurance
Commissioner pursuant to this section: Provided, That a
pharmacy benefit manager registered pursuant to §33-5-7 of
this code may continue to do business in the state until the 
Insurance Commissioner has completed the legislative rule 
as set forth in §33-55-10 of this code: *Provided, however, 
That additionally the pharmacy benefit manager shall 
submit an application within six months of completion of 
the final rule. The Insurance Commissioner shall make an 
application form available on its publicly accessible Internet 
website that includes a request for the following 
information:

(1) The identity, address, and telephone number of the 
applicant;

(2) The name, business address, and telephone number 
of the contact person for the applicant;

(3) When applicable, the federal employer identification 
number for the applicant; and

(4) Any other information the Insurance Commissioner 
considers necessary and appropriate to establish the 
qualifications to receive a license as a pharmacy benefit 
manager to complete the licensure process, as set forth by 
legislative rule promulgated by the Insurance 
Commissioner pursuant to §33-51-9(f) of this code.

(b) Term and fee. —

(1) The term of licensure shall be two years from the 
date of issuance.

(2) The Insurance Commissioner shall determine the 
amount of the initial application fee and the renewal 
application fee for the registration. The fee shall be 
submitted by the applicant with an application for 
registration. An initial application fee is nonrefundable. A 
renewal application fee shall be returned if the renewal of 
the registration is not granted.

(3) The amount of the initial application fees and 
renewal application fees must be sufficient to fund the
Insurance Commissioner's duties in relation to his/her responsibilities under this section, but a single fee may not exceed $10,000.

(4) Each application for a license, and subsequent renewal for a license, shall be accompanied by evidence of financial responsibility in an amount of $1 million.

(c) Licensure. —

(1) The Insurance Commissioner shall propose legislative rules, in accordance with §33-51-9(f) of this code, establishing the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefit managers.

(2) Upon receipt of a completed application, evidence of financial responsibility, and fee, the Insurance Commissioner shall make a review of each applicant and shall issue a license if the applicant is qualified in accordance with the provisions of this section and the rules promulgated by the Insurance Commissioner pursuant to this section. The commissioner may require additional information or submissions from an applicant and may obtain any documents or information reasonably necessary to verify the information contained in the application.

(3) The license may be in paper or electronic form, is nontransferable, and shall prominently list the expiration date of the license.

(d) Network adequacy. —

(1) A pharmacy benefit manager’s network shall not be comprised only of mail-order benefits but must have a mix of mail-order benefits and physical stores in this state.

(2) A pharmacy benefit manager shall provide a pharmacy benefit manager’s network report describing the pharmacy benefit manager’s network and the mix of mail-order to physical stores in this state in a time and manner
required by rule issued by the Insurance Commissioner pursuant to this section.

(3) Failure to provide a timely report may result in the suspension or revocation of a pharmacy benefit manager’s license by the Insurance Commissioner.

(e) Enforcement. —

(1) The Insurance Commissioner shall enforce this section and may examine or audit the books and records of a pharmacy benefit manager providing pharmacy benefits management to determine if the pharmacy benefit manager is in compliance with this section: Provided, That any information or data acquired during the examination or audit is considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code.

(2) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code regulating pharmacy benefit managers in a manner consistent with this chapter. Rules adopted pursuant to this section shall set forth penalties or fines, including, without limitation, monetary fines, suspension of licensure, and revocation of licensure for violations of this chapter and the rules adopted pursuant to this section.

(f) Applicability. —

(1) This section is applicable to any contract or health benefit plan issued, renewed, recredentialed, amended, or extended on or after July 1, 2019.

(2) The requirements of this section, and any rules promulgated by the Insurance Commissioner pursuant to §33-51-9(f) of this code, do not apply to the coverage of prescription drugs under a plan that is subject to the Employee Retirement Income Security Act of 1974 or any information relating to such coverage.
§33-51-9. Regulation of pharmacy benefit managers.

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

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

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

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

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

(d) A pharmacy benefit manager, or any other third party, that reimburses a 340B entity for drugs that are subject to an agreement under 42 U.S.C. §256b shall not reimburse the 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies similar in prescription volume that are not 340B entities, and shall not assess any fee, charge-back, or other adjustment upon the 340B entity on the basis that the 340B entity participates in the program set forth in 42 U.S.C. §256b.
(e) With respect to a patient eligible to receive drugs subject to an agreement under 42 U.S.C. § 256b, a pharmacy benefit manager, or any other third party that makes payment for such drugs, shall not discriminate against a 340B entity in a manner that prevents or interferes with the patient’s choice to receive such drugs from the 340B entity: 

Provided, That for purposes of this section, “third party” does not include the state Medicaid program when Medicaid is providing reimbursement for covered outpatient drugs, as that term is defined in 42 U.S.C. § 1396r-8(k), on a fee-for-service basis: 

Provided, however, That “third party” does include a Medicaid-managed care organization as described in 42 U.S.C. § 1396b(m).

(f) This section does not apply with respect to claims under an employee benefit plan under the Employee Retirement Income Security Act of 1974 or, except for paragraph (d), to Medicare Part D.

§33-51-10. Commissioner authorized to propose rules.

The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code that are necessary to effectuate the provisions of this article.

CHAPTER 146

(S. B. 587 - By Senator Trump)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §5-16-8a of the Code of West Virginia, 1931, as amended, relating to the West Virginia Public Employees Insurance Agency’s reimbursement of air-
ambulance providers who provide emergency transportation to individuals covered by the plan.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8a. Air-ambulance fees.

(a) The plan shall reimburse any air-ambulance provider that provides emergency air transportation or related emergency medical or treatment services to an employee or dependent of an employee covered by the plan the amount then in effect for the federal Medicare program, including any applicable Geographic Practice Cost Index.

(b) Nothing in this section limits the authority of the director under §5-16-3(c) and §5-16-9 of this code, including, but not limited to, his or her authority to manage provider contracting and payments and to designate covered and noncovered services.

(c) This section does not limit the authority of the director, the plan, or the plans under §5-16-11 of this code.

(d) Notwithstanding any provision of this code to the contrary, wherever 49 U.S.C. §41713(b) applies to the reimbursement of air ambulance providers under §5-16-8a of this code, the provisions of this code, including any administrative, civil, or criminal penalties, are inapplicable.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7f; to amend said code by adding thereto a new section, designated §33-15-4s; to amend said code by adding thereto a new section, designated §33-16-3dd; to amend said code by adding thereto a new section, designated §33-24-7s; to amend said code by adding thereto a new section, designated §33-25-8p; and to amend said code by adding thereto a new section, designated §33-25A-8s, all relating to prior authorizations; requiring health insurers to develop prior authorization forms; requiring health insurers to develop prior authorization portals; defining terms; providing for electronically transmitted prior authorization forms; establishing procedures for submission and acceptance of forms; establishing form requirements; establishing deadlines for approval of prior authorizations; providing for a process of an incomplete prior authorization submission; providing for an audit; setting forth peer review procedures; requiring health insurers to accept a prior authorization from other health insurers for a period of time; requiring health insurers to use certain standards when reviewing a prior authorization; providing an exemption for medication provided upon discharge; requiring an exemption for health care practitioners meeting specified criteria; requiring certain information to be included on the health insurer’s web page; establishing deadlines for pharmacy benefit prior authorization; establishing submission format for
pharmacy benefits; setting forth an effective date; providing for implementation applicability; and setting deadlines.

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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7f. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at, the site of service, excluding out of network care: Provided, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from the Public Employees Insurance Agency about the coverage of a service or medication.
(b) The Public Employees Insurance Agency is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the Public Employees Insurance Agency’s webpage. The forms shall:

1. Include instructions for the submission of clinical documentation;
2. Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;
3. Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Public Employees Insurance Agency requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;
4. Inform the patient if the Public Employees Insurance Agency requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the Public Employees Insurance Agency and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and
5. Be prepared by October 1, 2019.

(c) The Public Employees Insurance Agency shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The
Public Employees Insurance Agency is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the Public Employees Insurance Agency is currently accepting electronic prior authorization requests, the Public Employees Insurance Agency shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Public Employees Insurance Agency shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the Public Employees Insurance Agency shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient’s psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient’s medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the Public Employees Insurance Agency shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.
(f) If the Public Employees Insurance Agency wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by the Public Employees Insurance Agency is carried over to all other managed care organizations and health insurers for three months, if the services are provided within the state.

(h) The Public Employees Insurance Agency shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the Public Employees Insurance Agency and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The Public Employees Insurance Agency’s medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j)(1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: Provided, That the cost of the medication does not exceed $5,000 per day and the health care practitioner shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.
(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the Public Employees Insurance Agency shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the Public Employees Insurance Agency and may be rescinded if the Public Employees Insurance Agency determines the health care practitioner is not performing the procedure in conformity with the Public Employees Insurance Agency’s benefit plan based upon the results of the Public Employees Insurance Agency’s internal audit.

(l) The Public Employees Insurance Agency must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the Public Employees Insurance Agency is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The Public Employees Insurance Agency shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.
CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4s. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: Provided, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;
(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols, as set forth in this chapter. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization
request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient’s psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient’s medical condition would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months, if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the
prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer’s medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: Provided, That the cost of the medication does not exceed $5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer’s benefit plan based upon the results of the health insurer’s internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for
pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3dd. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out of network care: Provided, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and
“Prior Authorization” means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

1. Include instructions for the submission of clinical documentation;
2. Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;
3. Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;
4. Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and
(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient’s psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient’s medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner or
the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a managed care organization is carried over to health insurers, the public employees insurance agency and all other managed care organizations for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer’s medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: Provided, That the cost of the medication does not exceed $5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.
(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing by the health insurer at any time and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer’s benefit plan based upon the results of the health insurer’s internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

§33-24-7s. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: Provided, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;
(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization
request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient’s psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient’s medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the
prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer’s medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: Provided, That the cost of the medication does not exceed $5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer’s benefit plan based upon the results of the health insurer’s internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for
pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

ARTICLE 25. HEALTH CARE CORPORATIONS.


(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: Provided, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be
used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

1. Include instructions for the submission of clinical documentation;

2. Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

3. Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

4. Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

5. Be prepared by October 1, 2019.
(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient’s psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient’s medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.
(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer’s medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: Provided, That the cost of the medication does not exceed $5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.
(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer’s benefit plan based upon the results of the health insurer’s internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8s. Prior authorization.
(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: Provided, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from a health maintenance organization about the coverage of a service or medication.

(b) The health maintenance organization is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health maintenance organization’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;
(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health maintenance organization requires a prior authorization. This list shall also delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health maintenance organization requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health maintenance organization and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health maintenance organization shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health maintenance organization is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health maintenance organization is currently accepting electronic prior authorization requests, the health maintenance organization shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health maintenance organization shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health maintenance
organization shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient’s psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient’s medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

e) If the information submitted is considered incomplete, the health maintenance organization shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

f) If the health maintenance organization wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

g) A prior authorization approved by a health maintenance organization is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health maintenance organization shall use national best practice guidelines to evaluate a prior authorization.
(i) If a prior authorization is rejected by the health maintenance organization and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health maintenance organization’s medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: Provided, That the cost of the medication does not exceed $5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health maintenance organization shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health maintenance organization and may be rescinded if the health maintenance organization determines the health care practitioner is not performing the procedure in conformity with the health maintenance organization’s benefit plan based upon the results of the health maintenance organization’s internal audit.
(l) The health maintenance organization must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health maintenance organization are currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health maintenance organizations shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

CHAPTER 148


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

AN ACT to amend and reenact §33-7-9 of the Code of West Virginia, 1931, as amended, relating to a reserving methodology for health insurance and annuity contracts; describing how the calendar year statutory valuation interest rate should be calculated regarding certain annuities and
guaranteed interest contracts; and prescribing the minimum standard of valuation for health insurance contracts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ASSETS AND LIABILITIES.


(a) This section shall be known as the standard valuation law. For the purposes of this section, the following definitions apply on or after the operative date of the valuation manual:

(1) The term “accident and health insurance” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) The term “appointed actuary” means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subdivision (2), subsection (c) of this section.

(3) The term “company” means an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one such policy in force or on claim, or has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.

(4) The term “deposit-type contract” means contracts that do not incorporate mortality or morbidity risks, and as may be specified in the valuation manual.

(5) The term “life insurance” means contracts that incorporate mortality risk, including annuity and pure
(6) The term “NAIC” means the National Association of Insurance Commissioners.

(7) The term “policyholder behavior” means any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(8) The term “principle-based valuation” means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (o) of this section as specified in the valuation manual.

(9) The term “qualified actuary” means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(10) The term “tail risk” means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(11) The term “valuation manual” means the manual of valuation instructions adopted by the commissioner in accordance with subsection (n) of this section.

(b) Reserve valuation. —
(1) Policies and Contracts Issued Prior to the Operative Date of the Valuation Manual. —

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state issued on or after January 1, 1958 and prior to the operative date of the valuation manual. In calculating reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(B) Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) of this section apply to all policies and contracts, as appropriate, subject to this section issued on or after January 1, 1958 and prior to the operative date of the valuation manual, and subsections (n) and (o) of this section do not apply to any such policies and contracts.

(C) The minimum standard for the valuation of policies and contracts issued prior to January 1, 1958 shall be that provided by the laws in effect immediately prior to that date.

(2) Policies and contracts issued on or after the operative date of the valuation manual. —

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made,
or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(B) Subsection (n) and (o) of this section apply to all policies and contracts issued on or after the operative date of the valuation manual.

(c) Actuarial opinion of reserves. —

(1) Actuarial Opinion Prior to the Operative Date of the Valuation Manual. —

(A) General. — Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(B) Actuarial analysis of reserves and assets supporting the reserves. —

(i) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by paragraph (A) of this subdivision an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company’s obligations under the
policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(ii) The commissioner may provide, by rule, for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this subdivision.

(C) Requirement for opinion under paragraph (B) of this subdivision. — Each opinion required by paragraph (B) of this subdivision shall be governed by the following provisions:

(i) A memorandum in form and substance acceptable to the commissioner as specified by rule shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(D) Requirement for all opinions subject to this subdivision. — Every opinion required by this subdivision is governed by the following:

(i) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(ii) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.
(iii) The opinion shall be based on standards adopted, from time to time, by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

(iv) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(v) For the purposes of this subsection, “qualified actuary” means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in such regulations.

(vi) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision, or conduct with respect to the actuary’s opinion.

(vii) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in rules by the commissioner.

(viii) Except as provided in subparagraphs (xii), (xiii), and (xiv) of this paragraph, documents, materials or other information in the possession or control of the commissioner that are a memorandum in support of the opinion and any other material provided by the company to the commissioner in connection therewith are confidential by law and privileged, exempt from disclosure under §29A-1-1 et seq. of this code and are not to be subject to subpoena and, additionally, are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or
legal action brought as a part of the commissioner’s official duties.

(ix) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subparagraph (viii) of this paragraph.

(x) In order to assist in the performance of the commissioner’s duties, the commissioner:

(I) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subparagraph (viii) of this paragraph with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(II) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(III) May enter into agreements governing sharing and use of information consistent with this subparagraph and subparagraphs (viii) and (ix) of this paragraph.
(xi) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this subsection or as a result of sharing as authorized in subparagraph (x) of this paragraph.

(xii) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this subsection or by rules.

(xiii) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(xiv) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(2) Actuarial Opinion of Reserves after the Operative Date of the Valuation Manual. —

(A) General. — Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to rule of the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that
satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(B) Actuarial Analysis of Reserves and Assets Supporting Reserves. — Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to rule of the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by paragraph (A) of this subdivision, an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company’s obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(C) Requirement for opinion under paragraph (B) of this subdivision. — Each opinion required by paragraph (B) of this subdivision shall be governed by the following:

(i) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise
unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(D) Requirement for all opinions subject to this subdivision. — Every opinion required by this subdivision is governed by the following:

(i) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner.

(ii) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after the operative date of the valuation manual.

(iii) The opinion shall apply to all policies and contracts subject to paragraph (B) of this subdivision, plus other actuarial liabilities as may be specified in the valuation manual.

(iv) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual.

(v) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vi) Except in cases of fraud or willful misconduct, the appointed actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the appointed actuary’s opinion.
(vii) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in rules.

(d) Computation of minimum standards. — Except as otherwise provided in subsections (e), (f), and (m) of this section, the minimum standard for the valuation of all policies and contracts issued prior to January 1, 1958 shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in subsections (e), (f), and (m) of this section, the minimum standard for the valuation of all policies and contracts issued on or after January 1, 1958 of this section shall be the commissioner reserve valuation methods defined in subsections (g), (h), (k), and (m) of this section, three and one-half percent interest or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1974, four percent interest for policies issued prior to April 6, 1977, five and one-half percent interest for single premium life insurance policies, and four and one-half percent interest for all other policies issued on and after April 6, 1977, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(A) The commissioner’s 1941 standard ordinary mortality table for policies issued prior to the operative date of §33-13-30(e) of this code;

(B) The commissioner’s 1958 standard ordinary mortality table for policies issued on or after the operative date of §33-13-30(e) of this code and prior to the operative date of §33-13-30(g) of this code: Provided, That for any category of policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and
(C) For policies issued on or after the operative date of §33-13-30(g) of this code:

(i) The commissioner’s 1980 standard ordinary mortality table;

(ii) At the election of the company for any one or more specified plans of life insurance, the commissioner’s 1980 standard ordinary mortality table with 10 year select mortality factors; or

(iii) Any ordinary mortality table adopted after the year 1980 by the NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: the 1941 standard industrial mortality table for policies issued prior to the operative date of §33-13-30(f) of this code and for policies issued on or after the operative date, the commissioner’s 1961 standard industrial mortality table or any industrial mortality table adopted after the year 1980 by the NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in policies: the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: The group annuity mortality table for 1951, any modification of the table approved by the commissioner or, at the option of the company, any of the tables or
modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year 1980 by the NAIC that are approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to January 1, 1961, the Class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year 1980 by the NAIC that is approved by rules promulgated by the commissioner for use in determining the minimum standard of valuation for the policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis, and other special benefits: Tables as may be approved by the commissioner.
(e) Computation of minimum standard for annuities. — Except as provided in subsection (f) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner’s reserve valuation methods defined in subsections (g) and (h) of this section and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to April 6, 1977, excluding any disability and accidental death benefits in the contracts: The 1971 individual annuity mortality table or any modification of this table approved by the commissioner and six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after April 6, 1977, excluding any disability and accidental death benefits in the contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and seven and one-half percent interest;

(3) For individual annuity and pure endowment contracts issued on or after April 6, 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification
of these tables approved by the commissioner and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts;

(4) For all annuities and pure endowments purchased prior to April 6, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: The 1971 group annuity mortality table or any modification of this table approved by the commissioner and six percent interest;

(5) For all annuities and pure endowments purchased on or after April 6, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts: The 1971 group annuity mortality table or any group annuity mortality table adopted after the year 1980 by the NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments or any modification of these tables approved by the commissioner and seven and one-half percent interest.

After June 3, 1974, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for the company provided, if a company makes no election, the operative date of this section for the company shall be January 1, 1979.

(f) Computation of minimum standard by calendar year of issue. —

(1) The interest rates used in determining the minimum standard for the valuation of the following shall be the
calendar year statutory valuation interest rates as defined in this section:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of §33-13-30(g) of this code, as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(C) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(2) Calendar year statutory valuation interest rates. —

(A) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one quarter of one percent:

(i) For life insurance: 
\[ I = 0.03 + W(R1 - 0.03) + W/2(R2 - 0.09); \]

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options: 
\[ I = 0.03 + W(R - 0.03) \]

Where R1 is the lesser of R and 0.09; R2 is the greater of R and 0.09; R is the reference interest rate defined in this subsection; and W is the weighting factor defined in this subsection;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options,
valued on an issue-year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply.

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent, the calendar year statutory valuation interest rate for the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for the year 1980 (using the reference interest rate defined for the year 1979) and shall be determined for each subsequent calendar year regardless of when §33-13-30(g) of this code, as amended, becomes operative.

(3) Weighting factors. —
(A) The weighting factors referred to in the formulas stated above are given in the following tables:

(i) Weighting factors for life insurance:

- Guarantee duration of 10 years or less: .50
- Guarantee duration of more than 10 years but not more than 20 years: .45
- Guarantee duration of more than 20 years: .35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (ii) of this paragraph, shall be as specified in clauses (I), (II), and (III) of this subparagraph, according to the rules and definitions in clauses (IV), (V), and (VI) of this subparagraph:

(I) For annuities and guaranteed interest contracts valued on an issue year basis, the following weighting factors shall apply:

- Guarantee duration of five years or less: Plan Type A - .80; Plan Type B - .60; Plan Type C - .50
Guarantee duration of more than five years but not more than 10 years: Plan Type A - .75; Plan Type B - .60; Plan Type C - .50

Guarantee duration of more than 10 years but not more than 20 years: Plan Type A - .65; Plan Type B - .50; Plan Type C - .45

Guarantee duration of more than 20 years: Plan Type A - .45; Plan Type B - .35; Plan Type C - .35

(II) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in clause (I) of this subparagraph increased by:

Plan Type A - .15; Plan Type B - .25; Plan Type C - .05

(III) For annuities and guaranteed interest contracts valued on an issue-year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in clause (I) of this subparagraph or derived in clause (II) of this subparagraph increased by:

Plan Type A - .05; Plan Type B - .05; Plan Type C - .05

(IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.
Plan type as used in the above tables is defined as follows:

Plan Type A:
At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B:
Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

Plan Type C:
Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this section, an issue-year basis of valuation refers
to a valuation basis under which the interest rate used to
determine the minimum valuation standard for the entire
duration of the annuity or guaranteed interest contract is the
calendar year valuation interest rate for the year of issue or
year of purchase of the annuity or guaranteed interest
contract and the change in fund basis of valuation refers to
a valuation basis under which the interest rate used to
determine the minimum valuation standard applicable to
each change in the fund held under the annuity or
guaranteed interest contract is the calendar year valuation
interest rate for the year of the change in the fund.

(4) The reference interest rate. —

(A) Reference interest rate referred to in subdivision (2)
of this subsection is defined as follows:

(i) For all life insurance, the lesser of the average over a
period of 36 months and the average over a period of 12
months, ending on June 30 of the calendar year next
preceding the year of issue, of the monthly average of the
composite yield on seasoned corporate bonds as published
by Moody’s Investors Service, Inc.;

(ii) For single premium immediate annuities and for
annuity benefits involving life contingencies arising from
other annuities with cash settlement options and guaranteed
interest contracts with cash settlement options, the average
over a period of 12 months, ending on June 30 of the
calendar year of issue or year of purchase, of the monthly
average of the composite yield on seasoned corporate bonds
as published by Moody’s Investors Service, Inc.;

(iii) For other annuities with cash settlement options and
guaranteed interest contracts with cash settlement options,
valued on a year of issue basis, except as stated in
subparagraph (ii) of this paragraph, with guarantee duration
in excess of 10 years, the lesser of the average over a period
of 36 months and the average over a period of 12 months,
ending on June 30 of the calendar year of issue or purchase,
of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.;

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.;

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.; and

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.

(5) Alternative method for determining reference interest rates. —

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody’s Investors Service, Inc., or in the event that the NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc., is no longer appropriate for the
determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the NAIC and approved by rule promulgated by the commissioner, may be substituted.

(g) Reserve valuation method: Life insurance and endowment benefits. —

(1) Except as otherwise provided in subsections (h), (k), and (m) of this section, reserves according to the commissioner’s reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided by the policy and the excess of paragraph (A) of this subdivision over paragraph (B) of this subdivision, as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: Provided, That such net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.
(2) For any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner’s reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in subdivision (1) of this subsection and the reserve as of the policy anniversary calculated as described in that subdivision, but with: (i) The value defined in subdivision (1) of this subsection being reduced by 15 percent of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided by the policy after the assumed ending date; (iii) the policy being assumed to mature on the date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

(3) Reserves according to the commissioner’s reserve valuation method shall be calculated by a method consistent with the principles of subdivisions (1) and (2) of this subsection for:

(A) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(B) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred
compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U.S.C. §408) as now or hereafter amended;

(C) Disability and accidental death benefits in all policies and contracts; and

(D) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

(h) Reserve valuation method: Annuity and pure endowment benefits. —

(1) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U.S.C. §408) as now or hereafter amended.

(2) Reserves according to the commissioner’s annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided by the contracts at the end of each respective contract year over the present value, at the date of valuation, of any future valuation considerations derived from future gross
considerations, required by the terms of the contract, that become payable prior to the end of the respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

(i) Minimum reserves. —

(1) In no event shall a company’s aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after January 1, 1958 be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k), and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (c) of this section.

(j) Optional reserve calculation. —

(1) Reserves for all policies and contracts issued prior to January 1, 1958 may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(2) Reserves for any category of policies, contracts or benefits as established by the commissioner issued on or after January 1, 1958 may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated
according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

(3) Any company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided: Provided, That for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by subsection (c) of this section shall not be considered to be the adoption of a higher standard of valuation.

(k) Reserve calculation: Valuation net premium exceeding the gross premium charged. —

(1) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (d) and (f) of this section: Provided, That for any life insurance policy issued on or after January 1, 1985, for which the gross
premium in the first policy year exceeds that of the second
year and for which no comparable additional benefit is
provided in the first year for such excess and which provides
an endowment benefit or a cash surrender value or a
combination thereof in an amount greater than the excess
premium, the foregoing provisions of this subsection shall
be applied as if the method actually used in calculating the
reserve for the policy were the method described in
subsection (g) of this section, ignoring subdivision (2) of
said subsection.

(2) The minimum reserve at each policy anniversary of
such a policy shall be the greater of the minimum reserve
calculated in accordance with subsection (g) of this section,
including subdivision (2) of said subsection, and the
minimum reserve calculated in accordance with this
subsection.

(l) Reserve calculation: Indeterminate premium plans. —

In the case of any plan of life insurance which
provides for future premium determination, the amounts
of which are to be determined by the insurance company
based on then estimates of future experience, or in the
case of any plan of life insurance or annuity which is of
such a nature that the minimum reserves cannot be
determined by the methods described in subsections (g),
(h), and (k) of this section, the reserves which are held
under any such plan must:

(1) Be appropriate in relation to the benefits and the
pattern of premiums for that plan; and

(2) Be computed by a method which is consistent with
the principles of this standard valuation law as determined
by rules promulgated by the commissioner.

(m) Minimum standard for accident and health
insurance contracts. —
For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subdivision (2), subsection (b) of this section. For accident and sickness insurance contracts issued on or after January 1, 1958 and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

(n) Valuation manual for policies issued on or after the operative date of the valuation manual. —

(1) The commissioner shall promulgate emergency rules adopting a valuation manual that is substantially similar to the valuation manual approved by the NAIC and any amendments to the manual as may be subsequently approved by the NAIC, and the rules shall be effective in accordance with subdivisions (2) and (3) of this subsection.

(2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(A) The valuation manual has been adopted by the NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater;

(B) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008: Life, accident, and health annual statements; health annual statements; and fraternal annual statements; and

(C) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the
following 55 jurisdictions: The 50 states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when the changes have been adopted by the NAIC by an affirmative vote representing:

(A) At least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership; and

(B) Members of the NAIC representing jurisdictions totaling greater than 75 percent of the direct premiums written, as reported in the following annual statements most recently available prior to the vote in paragraph (A) of this subdivision: Life, accident, and health annual statements, health annual statements, or fraternal annual statements.

(4) The valuation manual must specify all of the following:

(A) Minimum valuation standards for and definitions of the policies or contracts subject to subdivision (2), subsection (b) of this section. The minimum valuation standards shall be:

(i) The commissioner’s reserve valuation method for life insurance contracts, other than annuity contracts, subject to subdivision (2), subsection (b) of this section;

(ii) The commissioner’s annuity reserve valuation method for annuity contracts subject to subdivision (2), subsection (b) of this section; and

(iii) Minimum reserves for all other policies or contracts subject to subdivision (2), subsection (b) of this section.
(B) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subdivision (1), subsection (o) of this section and the minimum valuation standards consistent with those requirements.

(C) For policies and contracts subject to a principle-based valuation under subsection (o) of this section:

(i) Requirements for the format of reports to the commissioner under paragraph (C), subdivision (2), subsection (o) of this section and which shall include information necessary to determine if the valuation is appropriate and in compliance with this section;

(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(iii) Procedures for corporate governance and oversight of the actuarial function and a process for appropriate waiver or modification of the procedures.

(D) For policies not subject to a principle-based valuation under subsection (o), the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(E) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement,
disclosure, certifications, reports, actuarial opinions and
memoranda, transition rules and internal controls; and

(F) The data and form of the data required under
subsection (p) of this section, with whom the data must be
submitted, and may specify other requirements including
data analyses and reporting of analyses.

(5) For policies issued on or after the operative date of
the valuation manual, the standard prescribed in the
valuation manual is the minimum standard of valuation
required under subdivision (2), subsection (b) of this
section, except as provided under subdivision (6) or (8) of
this subsection.

(6) In the absence of a specific valuation requirement or
if a specific valuation requirement in the valuation manual
is not, in the opinion of the commissioner, in compliance
with this section, then the company shall, with respect to the
requirements, comply with minimum valuation standards
prescribed by rule.

(7) The commissioner may engage a qualified actuary,
at the expense of the company, to perform an actuarial
examination of the company and opine on the
appropriateness of any reserve assumption or method used
by the company, or to review and opine on a company’s
compliance with any requirement set forth in this section.
The commissioner may rely upon the opinion, regarding
provisions contained within this section, of a qualified
actuary engaged by the commissioner of another state,
district, or territory of the United States. As used in this
subdivision, term “engage” includes employment and
contracting.

(8) The commissioner may require a company to change
any assumption or method that in the opinion of the
commissioner is necessary in order to comply with the
requirements of the valuation manual or this section, and the
company shall adjust the reserves as required by the commissioner.

(o) Requirements of a Principle-Based Valuation. —

(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(A) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For polices or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(B) Incorporate assumptions, risk analysis methods and financial models, and management techniques that are consistent with, but not necessarily identical to, those utilized within the company’s overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(C) Incorporate assumptions that are derived in one of the following manners:

(i) The assumption is prescribed in the valuation manual; or

(ii) For assumptions that are not prescribed, the assumptions shall either:

(I) Be established utilizing the company’s available experience, to the extent it is relevant and statistically credible; or

(II) To the extent that company data is not available, relevant or statistically credible, be established utilizing other relevant, statistically credible experience.
(D) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(A) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(B) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

(C) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

(p) Experience reporting for policies in force on or after the operative date of the valuation manual. — A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(q) Confidentiality. —

(1) For purposes of this subsection, “confidential information” means:
(A) A memorandum in support of an opinion submitted under subsection (c) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with the memorandum;

(B) All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in the course of an examination made under subdivision (7), subsection (n) of this section, but only to the same extent as the documents, materials, and other information would be held confidential were they created, produced or obtained in connection with an examination made under the general examination law set forth in §33-2-9 of this code;

(C) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under paragraph (B), subdivision (2), subsection (o) of this section evaluating the effectiveness of the company’s internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with the reports, documents, materials, and other information;

(D) Any principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with the report; and
(E) Any documents, materials, data, and other information submitted by a company under subsection (p) of this section (collectively, “experience data”) and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with the experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any “experience data”, the “experience materials”) and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with the experience materials.

(2) Privilege for, and Confidentiality of, Confidential Information. —

(A) Except as otherwise provided in this subsection, a company’s confidential information is confidential by law and privileged, is exempt from disclosure under §29A-1-1 et seq. of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action: Provided, That the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner’s official duties.

(B) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential information.

(C) In order to assist in the performance of the commissioner’s duties, the commissioner may share confidential information:
(i) With other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries;

(ii) In the case of confidential information specified in paragraphs (A) and (D), subdivision (1) of this subsection only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law-enforcement officials; and

(iii) In the case of subparagraphs (i) and (ii) of this paragraph, provided that the recipient agrees and has the legal authority to agree, to maintain the confidentiality and privileged status of the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(D) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law-enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor, and he or she shall maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(E) The commissioner may enter into agreements governing sharing and use of information consistent with this subdivision.

(F) No waiver of any applicable privilege or claim of confidentiality in the confidential information occurs as a result of disclosure to the commissioner under this section.
or as a result of sharing as authorized in paragraph (C) of this subdivision.

(G) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subdivision is available and may be enforced in any proceeding in, and in any court of, this state.

(H) In this subsection “regulatory agency”, “law-enforcement agency”, and the “NAIC” include, but are not limited to, their employees, agents, consultants, and contractors.

(3) Notwithstanding subdivision (2) of this subsection, any confidential information specified in paragraphs (A) and (D), subdivision (1) of this subsection:

(A) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection (c) of this section or principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section by reason of an action required by this section or by rules promulgated hereunder;

(B) May otherwise be released by the commissioner with the written consent of the company; and

(C) Once any portion of a memorandum in support of an opinion submitted under subsection (c) of this section or a principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the memorandum or report are no longer confidential.
AN ACT to amend and reenact §33-6-33 of the Code of West Virginia, 1931, as amended, relating to the valuation of a motor vehicle involved in an insurance claim; requiring that an amount equal to the consumers sales tax applicable to the sale of motor vehicles be added to a cash settlement arising from a total loss of a motor vehicle.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-33. Valuation of motor vehicle involved in claim.

Insurance companies doing business in this state shall use the most recent version of an “official used car guide” approved by the Insurance Commissioner as a guide for setting the minimum value of any motor vehicle involved in a claim settlement arising from the total loss of a motor vehicle. In addition to any cash settlement value so agreed to by the claimant, there shall be added an amount equal to the consumers sales tax set forth in §11-15-3c (b) of this code.
AN ACT to amend and reenact §33-33-2, §33-33-12 and §33-33-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-33-12a; and to amend said code by adding thereto a new article, designated §33-52-1, §33-52-2, §33-52-3, §33-52-4, §33-52-5, §33-52-6, §33-52-7, §33-52-8, and §33-52-9, all relating to the corporate governance practices of an insurance company or a group of insurers; defining internal audit function; making an insurer’s audit committee responsible for overseeing the insurer’s internal audit function; providing that certain insurers must establish an internal audit function with respect to the insurer’s governance, risk management, and internal controls; requiring the head of an insurer’s internal audit function to report to the insurer’s audit committee regularly, but no less than annually, about the periodic audit plan, factors that may adversely impact the internal audit function’s independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings; exempting certain insurers from the internal audit function requirements; stating purpose of Corporate Governance Annual Disclosure Act; defining terms; requiring an insurer to annually submit to the insurance commissioner a corporate governance annual disclosure; describing the contents of the corporate governance annual disclosure; requiring that the corporate governance annual disclosure
include a signature of the insurer’s chief executive officer or corporate secretary; permitting the insurer to choose the corporate level that the corporate governance annual disclosure is applicable, depending upon how the insurer has structured its corporate governance system; allowing the insurer to comply with the corporate governance annual disclosure requirements by cross referencing other documents or referencing documents already in the possession of the insurance commissioner; requiring that documents and other information related to the corporate governance annual disclosure be confidential and privileged; permitting the insurance commissioner to share documents, materials or other corporate governance annual disclosure-related information with National Association of Insurance Commissioners and other regulatory bodies; providing that the insurance commissioner may retain third-party consultants to assist the commissioner in reviewing the corporate governance annual disclosure and related information; subjecting such third-party consultants and the National Association of Insurance Commissioners to the same confidentiality standards as the insurance commissioner; setting forth the penalty for an insurer that fails to timely provide a corporate governance annual disclosure to the insurance commissioner; and providing for effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-2. Definitions.

1 As used in this article:

2 (1) “Accountant” or “independent certified public accountant” means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice; for Canadian and British companies, the terms mean a Canadian-chartered or British-chartered accountant.
(2) An “affiliate” of, or person “affiliated” with a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(3) “Audit committee” means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this article at the election of the controlling person. If an audit committee is not designated by the insurer, the insurer’s entire board of directors shall constitute the audit committee.

(4) “Audited financial report” means and includes those items specified in section four of this article.

(5) “Indemnification” means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or other professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(6) “Independent board member” has the same meaning as described in subdivision (4), section 12 of this article.

(7) “Insurer” means any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers’ mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive
insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

(8) “Group of insurers” means those licensed insurers included in the reporting requirements of article 27 of this chapter, or a set of insurers as identified by management for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) “Internal audit function” means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization’s operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

(10) “Internal control over financial reporting” means a process effected by an entity’s board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements. The process includes the requirements set forth in subdivisions (2) through (7), subsection (b), section four of this article and those policies and procedures that:

(A) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(B) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(C) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.
“SEC” means the United States Securities and Exchange Commission.

“Section 404” means section 404 of the Sarbanes-Oxley Act of 2002 and the SEC’s rules and regulations promulgated thereunder.

“Section 404 report” means management’s report on “internal control over financial reporting” as defined by the SEC and the related attestation report of the independent certified public accountant as described in subdivision (1) of this section.

“SOX Compliant Entity” means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(A) The preapproval requirements of Section 201, Section 10A(i) of the Securities Exchange Act of 1934;

(B) The audit committee independence requirements of Section 301, Section 10A(m)(3) of the Securities Exchange Act of 1934; and

(C) The internal control over financial reporting requirements of Section 404, Item 308 of SEC Regulation S-K.

§33-33-12. Requirements for audit committees.

This section does not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(1) The audit committee is directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing
the audited financial report or related work pursuant to this article. Each accountant shall report directly to the audit committee.

(2) The audit committee of an insurer or group of insurers is responsible for overseeing the insurer’s internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities as required by §33-33-12a of this code.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subdivision (3), section two of this article and subdivision (6) of this section.

(4) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(5) If a member of the audit committee ceases to be independent for reasons outside the member’s reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.
(6) To exercise the election of the controlling person to designate the audit committee for purposes of this article, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(7)(A) The audit committee shall require the accountant that performs for an insurer any audit required by this article to timely report to the audit committee in accordance with the requirements of Statement of Auditing Standards (SAS) No. 61, “Communication with Audit Committees” or its replacement, including:

(i) All significant accounting policies and material permitted practices;

(ii) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(iii) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(B) If an insurer is a member of an insurance holding company system, the reports required by paragraph (A) of this subdivision may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.
(8) The proportion of independent audit committee members shall meet or exceed the following criteria with respect to prior calendar year, direct and assumed premiums:

- $0 - $300 million: No minimum requirements;
- Over $300 million - $500 million: Majority (50 percent or more) of members shall be independent;
- Over $500 million: Supermajority (75 percent or more) of members shall be independent.

(A) The commissioner has authority afforded by state law to require the entity’s board to enact improvements to the independence of the audit committee membership if the insurer is in a risk based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

(B) All insurers with less than $500 million in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

(C) Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(9) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500 million may make application to the commissioner for a waiver from this section’s requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the
National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

§33-33-12a. Internal Audit Function Requirements.

(a) An insurer is exempt from the requirements of this section if:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500 million; and

(2) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1 billion.

(b) The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer’s governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(c) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function may not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational
independence does not preclude dual-reporting relationships.

(d) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function’s independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(e) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

§33-33-16. Exemptions and effective dates.

(a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this article if the commissioner finds, upon review of the application, that compliance with this article would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days from a denial of an insurer’s written request for an exemption from this article, the insurer may request in writing a hearing on its application for an exemption.

(b) Unless otherwise provided in this section, the provisions of this article shall become effective on January 1, 2010.

(c) Domestic insurers retaining a certified public accountant on the effective date of this article who qualify as independent shall comply with this article for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.
(d) Domestic insurers not retaining a certified public accountant on the effective date of this article who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise:

1. As of December 31, 2010, file with the commissioner an audited financial report; and

2. For the year ending December 31, 2010, and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this article.

(e) Foreign insurers shall comply with this article for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.

(f) The requirements of subsection (d), section six of this article shall be in effect for audits of the year beginning January 1, 2010, and each year thereafter.

(g) The requirements of section twelve of this article are to be in effect January 1, 2010, and each year thereafter. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold exceeded to comply with the independence requirements. An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(h) The requirements of section fifteen of this article are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or
group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded to file a report. An insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(i) The requirements of §33-33-12a of this code are effective on January 1, 2020, and each year thereafter. If an insurer or group of insurers that is exempt from the requirements of §33-33-12a of this code no longer qualifies for that exemption, it shall have one year after the year the threshold is exceeded to comply with the requirements of this article.

ARTICLE 52. CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT.

§33-52-1. Short title, purpose and scope of article.

(a) This article may be cited as the “Corporate Governance Annual Disclosure Act”.

(b) The purpose of this article is to:

(1) Provide the commissioner a summary of an insurer’s or insurance group’s corporate governance structure, policies and practices to permit the commissioner to gain and maintain an understanding of the insurer’s corporate governance framework;

(2) Outline the requirements for completing a corporate governance annual disclosure with the commissioner;

(3) Set forth the procedures for filing the corporate governance annual disclosure; and

(4) Provide for the confidential treatment of the corporate governance annual disclosure and related
information that will contain confidential and sensitive
information related to an insurer or insurance group’s
internal operations and proprietary and trade secret
information which, if made public, could potentially cause
the insurer or insurance group competitive harm or
disadvantage.

(c) Nothing in this article limits the commissioner’s
examination authority, or the rights or obligations of third
parties, under §33-2-9 of this code.

(d) The requirements of this article apply to all licensed
insurers domiciled in this state.


As used in this article:

1. “Board” means the board of directors of an insurer
or insurance group.

2. “Corporate Governance Annual Disclosure” or
“CGAD” means a confidential report filed by the insurer or
insurance group made in accordance with the requirements
of this article.

3. “Insurance group” means those insurers and
affiliates included within an insurance holding company
system as defined in §33-27-2 of this code.

4. “Insurer” means every person engaged in the
business of making contracts of insurance, except that it
shall not include agencies, authorities or instrumentalities of
the United States, its possessions and territories, the
Commonwealth of Puerto Rico, the District of Columbia, or
a state or political subdivision of a state.

5. “ORSA summary report” means the report filed in
accordance with §33-40B-5 of this code.
(6) “Senior management” means any corporate officer responsible for reporting information to the board at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (CEO), chief financial officer (CFO), chief operations officer (COO), chief procurement officer (CPO), chief legal officer (CLO), chief information officer (CIO), chief technology officer (CTO), chief revenue officer (CRO), chief visionary officer (CVO), or any other “C” level executive.


(a) An insurer, or the insurance group of which the insurer is a member, shall annually submit to the commissioner a CGAD that contains the information described in §33-52-4 of this code. Notwithstanding any request from the commissioner made pursuant to subsection (c) of this section, if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners.

(b) The CGAD must include a signature of the insurer’s or insurance group’s chief executive officer or corporate secretary attesting to the best of that individual’s belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer’s or insurance group’s board or the appropriate committee thereof.

(c) An insurer not required to submit a CGAD under this section shall do so upon the commissioner’s request.

(d) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding
corporate governance at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer’s or insurance group’s risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(e) The review of the CGAD and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent financial analysis handbook referenced in subsection (a) of this section.

(f) Insurers providing information substantially similar to the information required by this article in other documents provided to the commissioner, including proxy statements filed in conjunction with a holding company’s Form B requirements or other state or federal filings provided to the commissioner, are not required to duplicate that information in the CGAD, but are only required to cross reference the document in which the information is included.

(g) Documentation and supporting information relevant to the CGAD shall be maintained by the insurer or insurance group and made available upon examination or upon request of the commissioner.

(a) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

(b) The CGAD shall describe the insurer’s or insurance group’s corporate governance framework and structure, including consideration of the following:

(1) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs, including, but not limited to, ultimate control level, intermediate holding company or legal entity. The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

(2) The duties of the board and each of its significant committees and how they are governed, including, but not limited to, bylaws, charters or informal mandates, as well as how the board’s leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.

(c) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(1) How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group;

(2) How an appropriate amount of independence is maintained on the board and its significant committees;
(3) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance;

(4) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board or committee training programs that have been put in place; and

(5) How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

(A) Whether a nomination committee is in place to identify and select individuals for consideration;

(B) Whether term limits are placed on directors;

(C) How the election and reelection processes function; and

(D) Whether a board diversity policy is in place and if so, how it functions.

(d) The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

(1) Any processes or practices, such as suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(A) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(B) Any changes in an officer’s or key person’s suitability as outlined by the insurer’s or insurance group’s
standards and procedures to monitor and evaluate such changes.

(2) The insurer’s or insurance group’s code of business conduct and ethics, the discussion of which considers, for example:

(A) Compliance with laws, rules, and regulations; and

(B) Proactive reporting of any illegal or unethical behavior.

(3) The insurer’s or insurance group’s processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:

(A) The board’s role in overseeing management compensation programs and practices;

(B) The various elements of compensation awarded in the insurer’s or insurance group’s compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(C) How compensation programs are related to both company and individual performance over time;

(D) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(E) Any clawback provisions built into the programs to recover awards or payments if the performance measures
upon which they are based are restated or otherwise adjusted; and

(F) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer’s or insurance group’s plans for chief executive officer and senior management succession.

(e) The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer’s business activities, including a discussion of:

(1) How oversight and management responsibilities are delegated between the board, its committees and senior management;

(2) How the board is kept informed of the insurer’s strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

(3) How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

(A) Risk management processes: Provided, That an insurer or insurance group may refer to its ORSA summary report;

(B) Actuarial function;

(C) Investment decision-making processes;
(D) Reinsurance decision-making processes;
(E) Business strategy/finance decision-making processes;
(F) Compliance function;
(G) Financial reporting/internal auditing; and
(H) Market conduct decision-making processes.

(f) The insurer or insurance group has discretion over the responses to the CGAD inquiries: Provided, That the CGAD shall contain the material information necessary to permit the commissioner to gain an understanding of the insurer’s or insurance group’s corporate governance structure, policies, and practices. The commissioner may request additional information that he or she deems material and necessary to provide the commissioner with a clear understanding of the corporate governance policies, the reporting or information system or controls implementing those policies.

§33-52-5. Filing procedures.

(a) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by §33-52-3 of this code, shall, no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the information described in §33-52-4 of this code.

(b) The insurer or insurance group has discretion regarding the appropriate format for providing the information required by this article and is permitted to customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

(c) Notwithstanding subsection (a) of this section, and as outlined in §33-52-3 of this code, if the CGAD is
completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(d) An insurer or insurance group may comply with this section by referencing other existing documents, including, but not limited to, ORSA summary report, holding company Form B or F filings, Securities and Exchange Commission (SEC) proxy statements or foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in §33-52-4 of this code. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the commissioner.

(e) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

§33-52-6. Confidentiality.

(a) Documents, materials or other information, including the CGAD, in the possession or control of the commissioner that are obtained by, created by or disclosed to the commissioner or any other person under this article, are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information are confidential by law and privileged, are not subject to the provisions of chapter 29e-b of this code, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. The
commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner’s official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer. Nothing in this section requires written consent of the insurer before the commissioner may share or receive confidential documents, materials or other CGAD-related information pursuant to subsection (c) of this section to assist in the performance of the commissioner’s regulatory duties.

(b) Neither the commissioner nor any person who received documents, materials or other CGAD-related information, through examination or otherwise, while acting under the authority of the commissioner, or with whom such documents, materials or other information are shared pursuant to this article is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the commissioner’s regulatory duties, the commissioner may:

(1) Share documents, materials or other CGAD-related information including the confidential and privileged documents, materials or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials with other state, federal and international financial regulatory agencies, members of any supervisory college as defined in §33-27-6a of this code, the National Association of Insurance Commissioners, and third party consultants pursuant to §33-52-7 of this code: Provided, That the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and
(2) Receive documents, materials or other CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal and international financial regulatory agencies, members of any supervisory college as defined in §33-27-6a of this code, and the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(d) The sharing of information and documents by the commissioner pursuant to this article does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other CGAD-related information may occur as a result of disclosure of such CGAD-related information or documents to the commissioner under this section or as a result of sharing as authorized in this article.


(a) The commissioner may retain, at the insurer’s expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner’s staff as may be reasonably necessary to assist the commissioner in reviewing the CGAD and related information or the insurer’s compliance with this article.

(b) Any persons retained under subsection (a) of this section is under the direction and control of the commissioner and may act only in a purely advisory capacity.
(c) The National Association of Insurance Commissioners and third-party consultants are subject to the same confidentiality standards and requirements as the commissioner.

(d) As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this article.

(e) A written agreement with the National Association of Insurance Commissioners and/or a third-party consultant governing sharing and use of information provided pursuant to this article shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this article:

1. Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article;

2. Procedures and protocols for sharing by the National Association of Insurance Commissioners only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

3. A provision specifying that ownership of the CGAD-related information shared with the National Association of Insurance Commissioners or a third-party consultant remains with the commissioner and the use of the information by the National Association of Insurance Commissioners or third-party consultant is subject to the direction of the commissioner;
(4) A provision that prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(5) A provision requiring the National Association of Insurance Commissioners or third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer’s CGAD-related information; and

(6) A requirement that the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article.


Any insurer failing, without just cause, to timely file the CGAD as required in this article shall be required, after notice and hearing, to pay a penalty of up to $1,000 for each day’s delay, to be recovered by the commissioner. Any penalty so recovered shall be paid into the General Revenue Fund of this state. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.


The requirements of this article are effective on January 1, 2020. The first filing of the CGAD shall be in 2020.
AN ACT to amend and reenact §33-27-2 and §33-27-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-27-6b, all relating to the regulation of an internationally active insurance group; defining group-wide supervisor and internationally active insurance group; providing authority for the insurance commissioner to act as a group-wide supervisor for an internationally active insurance group; permitting the insurance commissioner to acknowledge another regulatory official as the group-wide supervisor for an internationally active insurance group under certain criteria; requiring insurance companies to submit information necessary for the insurance commissioner to determine whether he or she may act as the group-wide supervisor for an internationally active insurance group; authorizing specific regulatory actions when the insurance commissioner is acting as a group-wide supervisor for an internationally active insurance group; allowing the insurance commissioner to enter into agreements with insurers regarding his or her role as group-wide supervisor for an internationally active insurance group; making insurers liable for the reasonable expenses of the insurance commissioner’s participation as a group-wide supervisor for an internationally active insurance group; and rendering information provided by insurers to the insurance commissioner in connection with the commissioner’s role as
a group-wide supervisor for an internationally active
insurance group as confidential and privileged.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


As used in this article:

(a) An “affiliate” of or person “affiliated” with a specific
person is a person that, directly or indirectly through one or
more intermediaries, controls or is controlled by or is under
common control with the person specified.

(b) “Commissioner” means the West Virginia Insurance
Commissioner, his or her deputies or the West Virginia
offices of the Insurance Commissioner, as appropriate.

(c) “Control” (including the terms “controlling”,
“controlled by” and “under common control with”) means
the possession, direct or indirect, of the power to direct or
cause the direction of the management and policies of a
person, whether through the ownership of voting securities,
by contract other than a commercial contract for goods or
nonmanagement services or otherwise, unless the power is
the result of an official position with or corporate office held
by the person. Control shall be presumed to exist if any
person, directly or indirectly, owns, controls, holds with the
power to vote or holds proxies representing ten percent or
more of the voting securities of any other person. This
presumption may be rebutted by a showing made in the
manner provided by subsection (k), section four of this
article that control does not exist in fact. The commissioner
may determine after furnishing all persons in interest notice
and opportunity to be heard and making specific findings of
fact to support the determination that control exists in fact
notwithstanding the absence of a presumption to that effect.
(d) “Enterprise risk” means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital to fall into company action level, as set forth in article forty of this chapter, or would cause the insurer to be in hazardous financial condition, as set forth in article thirty-four of this chapter.

(e) “Group-wide supervisor” means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under §33-27-6b of this code to have sufficient significant contacts with the internationally active insurance group.

(f) “Insurance holding company system” consists of two or more affiliated persons, one or more of which is an insurer.

(g) “Insurer” means any person or persons or corporation, partnership or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

(h) “Internationally active insurance group” means an insurance holding company system that includes an insurer registered under §33-27-4 of this code and meets the following criteria:

1. Premiums written in at least three countries;
2. The percentage of gross premiums written outside the United States is at least 10 percent of the insurance
holding company system’s total gross written premiums; and

(3) Based on a three-year rolling average, the total assets of the insurance holding company system are at least $50 billion or the total gross written premiums of the insurance holding company system are at least $10 billion.

(i) “Person” means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a depository institution or any similar entity or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

(j) A “security holder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(k) A “subsidiary” of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(l) “Voting security” includes any security convertible into or evidencing a right to acquire a voting security.

§33-27-6b. Group-wide supervision of internationally active insurance groups.

(a) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:
(1) Does not have substantial insurance operations in the United States;

(2) Has substantial insurance operations in the United States, but not in this state; or

(3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in subsections (c) and (g) of this section that the other regulatory official is the appropriate group-wide supervisor.

(b) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(c) In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group’s written premiums, assets or liabilities;

(2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
(3) The location of the executive offices or largest operational offices of the internationally active insurance group;

(4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(A) Substantially similar to the system of regulation provided under the laws of this state; or

(B) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subdivisions (1) through (5) of this subsection, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(d) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to
subsection (c) of this section in the event of a material change in the internationally active insurance group that results in:

(1) The internationally active insurance group’s insurers domiciled in this state holding the largest share of the group’s premiums, assets or liabilities; or

(2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group.

(e) Pursuant to §33-27-6 of this code, the commissioner is authorized to collect from any insurer registered pursuant to §33-27-4 of this code all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to §33-27-4 of this code and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish on the agency’s internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(f) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:
(A) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) Reasonable and effective mitigation measures are in place;

(2) Request from any member of an internationally active insurance group subject to the commissioner’s supervision information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(A) Governance, risk assessment and management;

(B) Capital adequacy; and

(C) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section seven of this article, through supervisory colleges as set forth in §33-27-6 of this code or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under §33-27-4 of this code, any member of the internationally active insurance group, and
any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner’s role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

(g) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor: Provided, That:

(1) The commissioner’s cooperation is in compliance with the laws of this state; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner’s activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

(h) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under §33-27-4 of this code, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance
(i) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner’s participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.


(a) Documents, materials or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to §33-27-6 of this code and all information reported or provided to the commissioner pursuant to §33-27-3(b) (12) or §33-27-3(b) (13) of this code; §33-27-4 of this code; §33-27-5 of this code; or §33-27-6b of this code is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29-b of this code, is not open to public inspection, is not subject to subpoena, is not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and is not subject to production pursuant to court order: Provided, That the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner’s official duties. The commissioner may not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.
(b) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this article may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the commissioner’s duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in §33-27-6a of this code, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) Notwithstanding subdivision (1) of this subsection, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to §33-27-4(l) of this code, with commissioners of states having statutes or regulations substantially similar to subdivision (1) of this subsection and who have agreed in writing not to disclose such information;

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as
confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this article consistent with this subsection that:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal or international regulators;

(B) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article remains with the commissioner, and the National Association of Insurance Commissioners’ use of the information is subject to the direction of the commissioner;

(C) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this article is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and

(D) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of
Insurance Commissioners and its affiliates and subsidiaries pursuant to this article.

(d) The sharing of information by the commissioner pursuant to this article does not constitute a delegation of regulatory authority, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(f) Documents, materials or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

CHAPTER 152


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

AN ACT to amend and reenact §33-6-31d of the Code of West Virginia, 1931, as amended, relating to the form for making offer of optional uninsured and underinsured coverage by insurers; requiring Insurance Commissioner to provide for the use of electronic means of delivery and electronic signing of
form; defining electronic means; requiring an insurer, when offering to place an insured with an affiliate of the insurer, to make available a new uninsured and underinsured motorist coverage offer form; and providing that last form previously signed governs if insured does not return the form.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

(a) Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle coverage required by §33-6-31 of this code shall be made available to the named insured at the time of initial application for liability coverage and upon any request of the named insured on a form prepared and made available by the Insurance Commissioner. The contents of the form shall be prescribed by the commissioner and shall specifically inform the named insured of the coverage offered and the rate calculation for the coverage, including, but not limited to, levels and amounts of the coverage available and the number of vehicles which will be subject to the coverage. The commissioner shall provide for the use of electronic means of delivery and electronic signing when issuing the prescribed form. The form shall allow any named insured to waive any or all of the coverage offered.

(b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the form to each person who applies for the issuance of a policy by delivering the form to the applicant or by mailing the form to the applicant. Insurers may deliver the form by electronic means. Delivery by “electronic means” includes delivery of the form to an electronic mail address at which an applicant or policyholder has consented to receive notices or documents, by posting on an electronic network or site accessible via the Internet, electronic device, or mobile
application, at or from which the applicant or policyholder
has consented to receive delivery, or by any other delivery
method that has been consented to by the applicant or
policyholder. Any document delivered electronically
satisfies any font, size, color, spacing, or other format
requirements that are established for printed documents,
provided that the format in the document delivered
electronically has reasonably similar proportions or
emphasis for the characters relative to the rest of the
electronic document. The applicant shall complete, date,
and sign the form and return the form to the insurer within
30 days after receipt of the form. Any signature executed in
conformity with the Uniform Electronic Transactions Act in
§39A-1-1 et seq. of this code is enforceable as provided by
that act. An insurer or agent of the insurer is not liable for
payment of any damages applicable under any optional
uninsured or underinsured coverage authorized by §33-6-31
of this code for any incident which occurs from the date the
form was mailed or delivered to the applicant until the
insurer receives the form and accepts payment of the
appropriate premium for the coverage requested in the form
from the applicant: Provided, That if prior to the insurer’s
receipt of the executed form the insurer issues a policy to
the applicant which provides for optional uninsured or
underinsured coverage, the insurer is liable for payment of
claims against the optional coverage up to the limits
provided in the policy. The contents of a form described in
this section which has been signed by an applicant creates a
presumption that the applicant and all named insureds
received an effective offer of the optional coverages
described in this section and that the applicant exercised a
knowing and intelligent election or rejection of the offer as
specified in the form. The election or rejection is binding on
all persons insured under the policy.

(c) Failure of the applicant or a named insured to return
the form described in this section to the insurer as required
by this section within the time periods specified in this
section creates a presumption that the person received an
effective offer of the optional coverages described in this section and that the person exercised a knowing and intelligent rejection of the offer. The rejection is binding on all persons insured under the policy.

(d) The insurer shall make the forms available to any named insured who requests different coverage limits on or after the effective date of this section. An insurer is not required to make the form available or notify any person of the availability of the optional coverages authorized by this section except as required by this section.

(e) Notwithstanding any of the provisions of this article to the contrary, including §33-6-31f of this code, for insurance policies in effect on December 31, 2015, insurers are not required to offer or obtain new uninsured or underinsured motorist coverage offer forms as described in this section on any insurance policy to comply with the amount of the minimum required financial responsibility limits set forth in §17D-4-2(b) of this code. All offer forms that were executed prior to January 1, 2016, shall remain in full force and effect.

(f) If an insurer offers to place an insured with an affiliate of the insurer, the insurer shall make available a new uninsured and underinsured motorist coverage offer form, in the manner provided by and pursuant to subsections (a) and (b) of this section. A named insured shall complete, date, and sign the form as provided by subsection (b) of this section and return the form to the insurer within 30 days after receipt of the form. If an insured does not return the form within 30 days, then the last form previously signed by the insured for the insurer or any affiliate governs the amount of uninsured and underinsured motorist coverage provided by the newly issuing insurer and remains binding on all persons insured under the policy.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-38, relating to establishing a limited lines insurance license for self-service storage providers; defining terms; providing for licensure of owners; setting forth requirements for the sale of self-service storage insurance; providing for sale by employees and authorized representatives of the owner; setting forth the authority of owners; and providing for suspension of privileges.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-38. Self-Service Storage Limited License Act.

(a) Definitions. For purposes of this section, the following terms have the following meanings:

(1) “Leased space” means the individual storage space at the self-service storage facility which is leased or rented to an occupant pursuant to a rental agreement;

(2) “Location” means any physical location in the State of West Virginia or any website, call center site, or similar location directed to residents of the State of West Virginia;
(3) “Occupant” means a person entitled to the use of a leased space at a self-service storage facility under a rental agreement, or the person’s sublessee, successor, or assign;

(4) “Owner” means the owner, operator, lessor, or sublessor of a self-service storage facility or the owner’s agent or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement;

(5) “Personal property” means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, motor vehicles, and household items and furnishings;

(6) “Rental agreement” means any agreement or lease that establishes or modifies the terms, conditions or rules concerning the lawful and reasonable use and occupancy of leased space at a self-service storage facility;

(7) “Self-service storage facility” means any real property used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants have access for storing or removing their personal property;

(8) “Self-service storage insurance” means personal property insurance offered in connection with and incidental to the lease or rental of leased space at a self-service storage facility that provides coverage to occupants at the self-service storage facility where the insurance is transacted for the loss of or damage to personal property that occurs at that facility or when the property is in transit to or from that facility during the period of the rental agreement; and

(9) “Supervising entity” means a business entity that is a licensed insurance producer or an insurer.

(b) Licensure of owners.
(1) An owner shall hold a limited lines license under this section if the owner sells, solicits, or offers coverage for self-service storage insurance. Notwithstanding any other provision of this section to the contrary, an owner is not required to be licensed solely to display and make available to occupants and prospective occupants brochures and other promotional materials created by or on behalf of an authorized insurer or surplus lines insurer.

(2) A limited lines license issued under this section is limited to authorizing an owner and the owner’s employees and authorized representatives to sell, solicit, and offer coverage for self-service storage insurance to occupants.

(3) A limited lines license issued under this section authorizes an owner and the owner’s employees and authorized representatives to sell, solicit, and offer self-service storage insurance coverage at each location at which the owner conducts business.

(4) An owner shall maintain, and share with its supervising entity, a list of all locations in this state at which self-service storage insurance is offered on its behalf. The supervising entity shall submit the list to the Insurance Commissioner within 30 days upon request.

(5) An owner and its employees and authorized representatives are not subject to the agent pre-licensing education, examination, or continuing education requirements of this article.

(c) Requirements for Sale of Self-Service Storage Insurance.

(1) At every location where self-service storage insurance is offered, the owner shall make brochures or other written or electronic materials available to occupants which:

(A) Disclose that self-service storage insurance may provide a duplication of coverage already provided by an
occupant’s homeowner’s insurance policy, renter’s insurance policy, or other source of coverage;

(B) State that the enrollment by the occupant for the self-service storage insurance coverage offered by the owner is not required in order to lease or rent leased space from the owner;

(C) Provide the actual terms of the self-service storage insurance coverage, or summarize the material terms of the insurance coverage, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) Benefits of the coverage; and

(v) Key terms and conditions of coverage;

(D) Summarize the process for filing a claim;

(E) State that the occupant may cancel enrollment for the self-service storage insurance coverage at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(2) Self-service storage insurance may be provided under an individual policy or under a commercial, corporate, group, or master policy.

(3) Eligibility and underwriting standards for occupants electing to enroll in coverage shall be established for each self-service storage insurance program.

(d) Authority of owners.

(1) The employees and authorized representatives of owners may sell, solicit, and offer self-service storage
insurance to occupants and are not subject to licensure as an insurance producer under this article provided that:

(A) The owner obtains a limited lines license to authorize the owner’s employees and authorized representatives to sell, solicit, and offer self-service storage insurance;

(B) The insurer issuing the self-service storage insurance appoints a supervising entity to supervise the administration of the program including development of a training program for employees and authorized representatives of the owner who sell, solicit, or offer self-service storage insurance. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to all employees and authorized representatives of the owner who sell, solicit, or offer self-service storage insurance;

(ii) The training may be provided in electronic form. However, if provided in an electronic form the supervising entity shall implement a supplemental education program regarding the self-service storage insurance that is provided and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative selling, soliciting, or offering self-service storage insurance shall receive basic instruction about the self-service storage insurance offered to occupants and the disclosures required under paragraph (C) of this subdivision.

(C) An employee or authorized representative of an owner does not advertise, represent, or otherwise hold himself or herself out as a licensed insurance producer, unless so licensed;

(D) An employee or authorized representative of an owner is compensated based primarily on the number of occupants enrolled for self-service storage insurance
coverage. Employees and authorized representatives may receive compensation for enrolling occupants for self-service storage insurance coverage as long as the compensation for those activities is incidental to their overall compensation;

(2) The charges for self-service storage insurance coverage may be billed and collected by the owner. Any charge to the occupant for coverage that is not included in the cost associated with the lease or rental of leased space shall be separately itemized on the occupant’s bill. If the coverage is included in the lease or rental of leased space, the owner shall clearly and conspicuously disclose to the occupant that the self-service storage insurance coverage is included with the lease or rental of leased space. An owner billing and collecting the charges is not required to maintain the funds in a segregated account, provided that the owner is authorized by the insurer to hold the funds in an alternative manner and remits the amounts to the supervising entity or insurer within 60 days of receipt. All premiums received by an owner from an occupant for self-service storage insurance shall be considered funds held by the owner in a fiduciary capacity for the benefit of the insurer. Owners may receive compensation for billing and collection services.

(e) Suspension of Privileges.

(1) If an owner or its employee or authorized representative violates any provision of this section, the commissioner may do any of the following:

(A) After notice and hearing, impose fines not to exceed $500 per violation or $5,000 in the aggregate for such conduct.

(B) After notice and hearing, impose other penalties that the commissioner considers necessary and reasonable to carry out the purpose of this article, including:
(i) Suspending the privilege of transacting self-service storage insurance pursuant to this section at specific business locations where violations have occurred; and

(ii) Suspending or revoking the ability of individual employees or authorized representatives to act under this section.

(2) If a supervising entity is determined by the commissioner to have not performed its required duties under this section or has otherwise violated any provision of this section, it is subject to the administrative actions set forth in §33-12-24 of this code.

CHAPTER 154


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

AN ACT to amend and reenact §33-26A-19 of the Code of West Virginia, 1931, as amended, relating to guaranty associations; and making revisions consistent with the National Association of Insurance Commissioners Life and Health Insurance Guaranty Association Model Act.

Be it enacted by the Legislature of West Virginia:

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

§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.
(a) A person, including a member insurer, agent, or affiliate of a member insurer, shall not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance or other coverage covered by the West Virginia Life and Health Insurance Guaranty Association Act: Provided, That this section shall not apply to the association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

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

(c) The document prepared under §33-26A-19(b) of this
code shall contain a clear and conspicuous disclaimer on its
face. The commissioner shall establish the form and content
of the disclaimer. The disclaimer shall:

(1) State the name and address of the association and
insurance department;

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

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

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

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

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

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

(d) A member insurer shall retain evidence of compliance
with §33-26A-19(b) of this code for so long as the policy or
contract for which the notice is given remains in effect.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4t; to amend said code by adding thereto a new section, designated §33-16-3ee; to amend said code by adding thereto a new section, designated §33-24-7t; to amend said code by adding thereto a new section, designated §33-25-8q; and to amend said code by adding thereto a new section, designated §33-25A-8t, all relating to establishing the Fairness in Cost-Sharing Calculation Act; providing for definitions; establishing health plan cost sharing calculations; establishing pharmacy benefits cost sharing calculations; providing for an effective date; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.


(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).
“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3ee. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to
receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

§33-24-7t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, to implement the provisions of this section.
(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8q. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.
(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):
(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

CHAPTER 156

(H. B. 2954 - By Delegate Summers)

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

AN ACT to amend and reenact §33-45-1 and §33-45-2 of the Code of West Virginia, 1931, as amended, all relating to ethics and fairness in insurer business practices; clarifying “provider” definition; correcting citations; and requiring payment for services of a provider who provides services during the credentialing period.

Be it enacted by the Legislature of West Virginia:

ARTICLE 45. ETHICS AND FAIRNESS IN INSURER BUSINESS PRACTICES.
§33-45-1. Definitions.

1 As used in this article:

2 (1) “Claim” means each individual request for
3 reimbursement or proof of loss made by or on behalf of an
4 insured or a provider to an insurer, or its intermediary,
5 administrator or representative, with which the provider has
6 a provider contract for payment for health care services
7 under any health plan.

8 (2) “Clean claim” means a claim:

9 (A) That has no material defect or impropriety,
10 including all reasonably required information and
11 substantiating documentation, to determine eligibility or to
12 adjudicate the claim; or

13 (B) With respect to which an insurer has failed timely to
14 notify the person submitting the claim of any such defect or
15 impropriety in accordance with section two of this article.

16 (3) “Commissioner” means the Insurance
17 Commissioner of West Virginia.

18 (4) “Health care services” means items or services
19 furnished to any individual for the purpose of preventing,
20 alleviating, curing, or healing human illness, injury or
21 physical or mental disability.

22 (5) “Health plan” means any individual or group health
23 care plan, subscription contract, evidence of coverage,
24 certificate, health services plan; medical or hospital services
25 plan as defined in article twenty four of this chapter;
26 accident and sickness insurance policy or certificate;
27 managed care health insurance plan, or health maintenance
28 organization subject to state regulation pursuant to §33-25a-
29 1 et seq., of this code; which is offered, arranged, issued or
30 administered in the state by an insurer authorized under this
31 chapter, a third-party administrator or an intermediary.
32 Health plan does not mean:
(A) Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. §1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq. or Title XX of the Social Security Act, 42 U.S.C. §1397 et seq. (Medicaid), 5 U.S.C. §8901 et seq., or 10 U.S.C. §1071 et seq. (CHAMPUS); or §5-16-1 et seq., of this code (PEIA);

(B) Accident only, credit or disability insurance, long-term care insurance, CHAMPUS supplement, Medicare supplement, workers’ compensation coverages or limited benefits policy as defined in article sixteen-e of this chapter; or

(C) Any a third-party administrator or an intermediary acting on behalf of providers as denoted in §33-45-1(5)(A) or §33-45-1(5)(B) of this code.

(6) “Insured” means a person who is provided health insurance coverage or other health care services coverage from an insurer under a health plan.

(7) “Insurer” means any person required to be licensed under this chapter which offers or administers as a third party administrator health insurance; operates a health plan subject to this chapter; or provides or arranges for the provision of health care services through networks or provider panels which are subject to regulation as the business of insurance under this chapter. “Insurer” also includes intermediaries. “Insurer” does not include:

(A) Credit accident and sickness insurance;

(B) Accident and sickness policies which provide benefits for loss of income due to disability;

(C) Any policy of liability of workers’ compensation insurance;

(D) Hospital indemnity or other fixed indemnity insurance;
(E) Life insurance, including endowment or annuity contracts, or contracts supplemental thereto, which contain only provisions relating to accident and sickness insurance that:

(i) Provide additional benefits in cases of death by accidental means; or

(ii) Operate to safeguard the contracts against lapse, in the event that the insured shall become totally and permanently disabled as defined by the contract or supplemental contract; and

(F) Property and casualty insurance.

(8) “Provider contract” means any contract between a provider and

(A) An insurer;

(B) A health plan; or

(C) An intermediary, relating to the provision of health care services.

(9) “Retroactive denial” means the practice of denying previously paid claims by withholding or setting off against payments, or in any other manner reducing or affecting the future claim payments to the provider, or to seek direct cash reimbursement from a provider for a payment previously made to the provider.

(10) “Provider” means a person or other entity which holds a valid license or permit, including a valid temporary license or permit pursuant to chapter 30 of this code, to provide specific health care services in this state.

(11) “Intermediary” means a physician, hospital, physician-hospital organization, independent provider organization, or independent provider network which receives compensation for arranging one or more health
care services to be rendered by providers to insureds of a health plan or insurer. An intermediary does not include an individual provider or group practice that utilizes only its employees, partners or shareholders and their professional licenses to render services.

§33-45-2. Minimum fair business standards contract provisions required; processing and payment of health care services; provider claims; commissioner’s jurisdiction.

(a) Every provider contract entered into, amended, extended, or renewed by an insurer on or after August 1, 2001, shall contain specific provisions which shall require the insurer to adhere to and comply with the following minimum fair business standards in the processing and payment of claims for health care services:

(1) An insurer shall either pay or deny a clean claim within 40 days of receipt of the claim if submitted manually and within 30 days of receipt of the claim if submitted electronically, except in the following circumstances:

(A) Another payor or party is responsible for the claim;

(B) The insurer is coordinating benefits with another payor;

(C) The provider has already been paid for the claim;

(D) The claim was submitted fraudulently; or

(E) There was a material misrepresentation in the claim.

(2) Each insurer shall maintain a written or electronic record of the date of receipt of a claim. The person submitting the claim shall be entitled to inspect the record on request and to rely on that record or on any other relevant evidence as proof of the fact of receipt of the claim. If an insurer fails to maintain an electronic or written record of the date a claim is received, the claim shall be considered
received three business days after the claim was submitted based upon the written or electronic record of the date of submittal by the person submitting the claim.

(3) An insurer shall, within 30 days after receipt of a claim, request electronically or in writing from the person submitting the claim any information or documentation that the insurer reasonably believes will be required to process and pay the claim or to determine if the claim is a clean claim. The insurer shall use all reasonable efforts to ask for all desired information in one request, and shall if necessary, within 15 days of the receipt of the information from the first request, only request or require additional information one additional time if such additional information could not have been reasonably identified at the time of the original request or to specifically identify a material failure to provide the information requested in the initial request.

Upon receipt of the information requested under this subsection which the insurer reasonably believes will be required to adjudicate the claim or to determine if the claim is a clean claim, an insurer shall either pay or deny the claim within 30 days. No insurer may refuse to pay a claim for health care services rendered pursuant to a provider contract which are covered benefits if the insurer fails to timely notify the person submitting the claim within 30 days of receipt of the claim of the additional information requested unless such failure was caused in material part by the person submitting the claims: Provided, That nothing herein shall preclude such an insurer from imposing a retroactive denial of payment of such a claim if permitted by the provider contract unless such retroactive denial of payment of the claim would violate §33-45-2(a)(7) of this code. This subsection does not require an insurer to pay a claim that is not a clean claim except as provided herein.

(4) Interest, at a rate of 10 percent per annum, accruing after the 40-day period provided in §33-45-2(a)(1) of this code owing or accruing on any claim under any provider contract or under any applicable law, shall be paid and
accompanied by an explanation of the assessment on each
claim of interest paid, without necessity of demand, at the
time the claim is paid or within 30 days thereafter.

(5) Every insurer shall establish and implement
reasonable policies to permit any provider with which there
is a provider contract:

(A) To promptly confirm in advance during normal
business hours by a process agreed to between the parties
whether the health care services to be provided are a covered
benefit; and

(B) To determine the insurer’s requirements applicable
to the provider (or to the type of health care services which
the provider has contracted to deliver under the provider
contract) for:

(i) Precertification or authorization of coverage
decisions;

(ii) Retroactive reconsideration of a certification or
authorization of coverage decision or retroactive denial of a
previously paid claim;

(iii) Provider-specific payment and reimbursement
methodology; and

(iv) Other provider-specific, applicable claims
processing and payment matters necessary to meet the terms
and conditions of the provider contract, including
determining whether a claim is a clean claim.

(C) Every insurer shall make available to the provider
within 20 business days of receipt of a request, reasonable
access either electronically or otherwise, to all the policies
that are applicable to the particular provider or to particular
health care services identified by the provider. In the event
the provision of the entire policy would violate any
applicable copyright law, the insurer may instead comply
with this subsection by timely delivering to the provider a
clear explanation of the policy as it applies to the provider and to any health care services identified by the provider.

(6) Every insurer shall pay a clean claim if the insurer has previously authorized the health care service or has advised the provider or enrollee in advance of the provision of health care services that the health care services are medically necessary and a covered benefit, unless:

(A) The documentation for the claim provided by the person submitting the claim clearly fails to support the claim as originally authorized; or

(B) The insurer’s refusal is because:

(i) Another payor or party is responsible for the payment;

(ii) The provider has already been paid for the health care services identified on the claim;

(iii) The claim was submitted fraudulently or the authorization was based in whole or material part on erroneous information provided to the insurer by the provider, enrollee, or other person not related to the insurer;

(iv) The person receiving the health care services was not eligible to receive them on the date of service and the insurer did not know, and with the exercise of reasonable care could not have known, of the person’s eligibility status;

(v) There is a dispute regarding the amount of charges submitted; or

(vi) The service provided was not a covered benefit and the insurer did not know, and with the exercise of reasonable care could not have known, at the time of the certification that the service was not covered.

(7) A previously paid claim may be retroactively denied only in accordance with this subdivision.
(A) No insurance company may retroactively deny a previously paid claim unless:

(i) The claim was submitted fraudulently;

(ii) The claim contained material misrepresentations;

(iii) The claim payment was incorrect because the provider was already paid for the health care services identified on the claim or the health care services were not delivered by the provider;

(iv) The provider was not entitled to reimbursement;

(v) The service provided was not covered by the health benefit plan; or

(vi) The insured was not eligible for reimbursement.

(B) A provider to whom a previously paid claim has been denied by a health plan in accordance with this section shall, upon receipt of notice of retroactive denial by the plan, notify the health plan within 40 days of the provider’s intent to pay or demand written explanation of the reasons for the denial.

(i) Upon receipt of explanation for retroactive denial, the provider shall reimburse the plan within 30 days for allowing an offset against future payments or provide written notice of dispute.

(ii) Disputes shall be resolved between the parties within 30 days of receipt of notice of dispute. The parties may agree to a process to resolve the disputes in a provider contract.

(iii) Upon resolution of dispute, the provider shall pay any amount due or provide written authorization for an offset against future payments.

(C) A health plan may retroactively deny a claim only for the reasons set forth in §33-45-2(a)(7)(A)(iii) through
§33-45-2(a)(7)(A)(vi) of this code for a period of one year from the date the claim was originally paid. There shall be no time limitations for retroactively denying a claim for the reasons set forth in §33-45-2(a)(7)(A)(i) and §33-45-2(a)(7)(A)(ii) of this code.

(8) No provider contract may fail to include or attach at the time it is presented to the provider for execution:

(A) The fee schedule, reimbursement policy or statement as to the manner in which claims will be calculated and paid which is applicable to the provider or to the range of health care services reasonably expected to be delivered by that type of provider on a routine basis; and

(B) All material addenda, schedules, and exhibits thereto applicable to the provider or to the range of health care services reasonably expected to be delivered by that type of provider under the provider contract.

(9) No amendment to any provider contract or to any addenda, schedule, or exhibit, or new addenda, schedule, exhibit, applicable to the provider to the extent that any of them involve payment or delivery of care by the provider, or to the range of health care services reasonably expected to be delivered by that type of provider, is effective as to the provider, unless the provider has been provided with the applicable portion of the proposed amendment, or of the proposed new addenda, schedule, or exhibit, and has failed to notify the insurer within 20 business days of receipt of the documentation of the provider’s intention to terminate the provider contract at the earliest date thereafter permitted under the provider contract.

(10) In the event that the insurer’s provision of a policy required to be provided under §33-45-2(a)(8) and §33-45-2(a)(9) of this code would violate any applicable copyright law, the insurer may instead comply with this section by providing a clear, written explanation of the policy as it applies to the provider.
(11) The insurer shall complete a credential check of any new provider and accept or reject the provider within four months following the submission of the provider’s completed application: Provided, That time frame may be extended for an additional three months because of delays in primary source verification. The insurer shall make available to providers a list of all information required to be included in the application. A provider who provides services during the credentialing period shall be paid for the services: Provided, That nothing in this subdivision prevents an insurer from obtaining refund of overpayments to a provider when the provider fails to become credentialed after having gone through the credentialing process.

(b) Without limiting the foregoing, in the processing of any payment of claims for health care services rendered by providers under provider contracts and in performing under its provider contracts, every insurer subject to regulation by this article shall adhere to and comply with the minimum fair business standards required under §33-45-2(a) of this code. The commissioner has jurisdiction to determine if an insurer has violated the standards set forth in §33-45-2(a) of this code by failing to include the requisite provisions in its provider contracts. The commissioner has jurisdiction to determine if the insurer has failed to implement the minimum fair business standards set out in §33-45-2(a)(1) and §33-45-2(a)(2) of this code in the performance of its provider contracts.

(c) No insurer is in violation of this section if its failure to comply with this section is caused in material part by the person submitting the claim or if the insurer’s compliance is rendered impossible due to matters beyond the insurer’s reasonable control, such as an act of God, insurrection, strike, fire, or power outages, which are not caused in material part by the insurer.
CHAPTER 157
(S. B. 377 - By Senator Maynard)

[Passed February 20, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT to amend and reenact §21-5C-1 of the Code of West Virginia, 1931, as amended, relating to minimum wage and maximum hours standards for employees; excluding seasonal amusement park workers from maximum hour requirements; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the Commissioner of Labor or his or her duly authorized representatives.

3 (b) “Wage and hour director” means the wage and hour director appointed by the Commissioner of Labor as Chief of the Wage and Hour Division.

4 (c) “Wage” means compensation due an employee by reason of his or her employment.

5 (d) “Employ” means to hire or permit to work.

6 (e) “Employer” includes the State of West Virginia, its agencies, departments, and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting
directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct, and permanent location or business establishment: Provided, That prior to January 1, 2015, the term “employer” does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to minimum wage, maximum hours, and overtime compensation: Provided, however, That after December 31, 2014, for the purposes of §21-5C-3 of this code, the term “employer” does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to maximum hours and overtime compensation.

(f) “Employee” includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal, or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys, and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his or her parent, son, daughter, or spouse; (6) any individual employed in a bona fide professional, executive, or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or survivors benefits from the Social Security Administration; (11) any individual employed in agriculture as
the word “agriculture” is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government and Finance of the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the Joint Committee on Government and Finance designated by such joint committee; (19) any person employed as a seasonal employee of a commercial whitewater outfitter where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-5C-3 of this code.

(g) “Work week” means a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.
“Hours worked” means the hours for which an employee is employed: Provided, that in determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which the employee is employed to perform and activities which are preliminary to or postliminary to the principal activity or activities, subject to such exceptions as the commissioner may by rules define.

“Amusement park” means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under §21-10-1 et seq. of this code.

 CHAPTER 158

(Com. Sub. for H. B. 2049 - By Delegates Foster, Porterfield, Waxman, Kessinger, Cowles, Hardy, Fast and Jennings)

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

AN ACT to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating to a prime contractor’s responsibility for wages and benefits of employees of a subcontractor; establishing personal and civil liability for the employer and its shareholders, owners, directors, and officers to the prime contractor for any sums paid under this section, including attorney’s fees; requiring notice to prime contractor by certified mail within 100 days of the missing wages becoming payable to the employee; instituting a one-year statute of limitations; requiring the employer of the employee to whom
wages and fringe benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor; requiring when an employee to whom wages and fringe benefits are due is represented by a union or other plan administrator that the union or other plan administrator must whenever feasible immediately upon notice of a claim cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor; providing that if the union or its agents or other plan administrator become aware that an employer is not timely in the payment of wages and fringe benefits the union or other plan administrator must immediately notify the affected employee and the prime contractor for whom the affected employee provided work; and providing that a prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-7. Prime contractor’s responsibility for wages and benefits.

(a) Whenever any person, firm, or corporation shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under the contract for the payment of wages and fringe benefits relating to such work only, exclusive of attorney’s fees, interest, liquidated damages, or any other damages of any kind, as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent that the employer of the employee fails to pay the wages and fringe benefits: for work performed under the contract with the prime contractor. The employer, and its shareholders, owners, directors, and officers shall be personally and
civilly liable to the prime contractor for any sums paid under this section, including attorney’s fees.

(b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

(1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee; and

(2) Commence the action within one year of the date the employee delivered notice to the prime contractor pursuant to subdivision (1) of this subsection.

(c) The employer of the employee to whom wages and/or fringe benefits are owed, shall whenever feasible provide, immediately upon request by the employee or the prime contractor, complete payroll records relating to work performed under the contract with the prime contractor.

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union or other plan administrator, the union or other plan administrator, shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor. Further, if the union or agents thereof or other plan administrator, including, but not limited to, third party administrators, trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

(e) A prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.
AN ACT to amend and reenact §64-2-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Department of Administration to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Department of Administration to promulgate a legislative rule relating to purchasing; authorizing the Department of Administration to promulgate a legislative rule relating to state-owned vehicles; and authorizing the Department of Administration to promulgate a legislative rule relating to leasing of space and acquisition of real property on behalf of state spending units.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

(a) The legislative rule filed in the State Register on July 18, 2018, authorized under the authority of §5A-3-4 of this code, relating to the Department of Administration (purchasing, 148 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 20, 2018, authorized under the authority of §5A-12-5 of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee, is authorized.
Committee and refiled in the State Register on November 14, 2018, relating to the Department of Administration (state-owned vehicles, 148 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July 19, 2018, authorized under the authority of §5A-10-11 of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 14, 2018, relating to the Department of Administration (leasing of space and acquisition of real property on behalf of state spending units, 148 CSR 19), is authorized.

CHAPTER 160

(Com. Sub. for S. B. 163 - By Senator Maynard)

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

AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating generally to authorizing agencies under the Department of Environmental Protection to promulgate rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from hazardous waste treatment, storage, and disposal facilities; authorizing the
Department of Environmental Protection to promulgate a legislative rule relating to requirements for determining conformity of transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Laws to applicable air quality implementation plans (transportation conformity); authorizing the Department of Environmental Protection to promulgate a legislative rule relating to provisions for determination of compliance with air quality management rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to cross-state air pollution rule to control annual nitrogen oxides emissions, annual sulfur dioxide emissions, and ozone season nitrogen oxides emissions; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§ 64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(b) The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 8), is authorized.

(c) The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.
(d) The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage, and disposal facilities, 45 CSR 25), is authorized.

(e) The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (requirements for determining conformity of transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Laws, to applicable air quality implementation plans (transportation conformity), 45 CSR 36), is authorized.

(f) The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (provisions for determination of compliance with air quality management rules, 45 CSR 38), is authorized.

(g) The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (cross-state air pollution rule to control annual nitrogen oxides emissions, annual sulfur dioxide emissions, and ozone season nitrogen oxides emissions, 45 CSR 43), is authorized.

(h) The legislative rule filed in the State Register on July 27, 2018, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2018, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 2), is authorized with the following amendment:
On page 18, after subdivision 8.5.a., by adding a new subdivision 8.6. to read as follows:

“8.6. On or before April 1, 2020, the Secretary shall propose updates to the numeric human health criteria found in Appendix E., subsection 8.23. Organics and subsection 8.25 Phenolic Materials to be presented to the 2021 Legislative Session. The Secretary shall allow for submission of proposed human health criteria until October 1, 2019, and for public comment and agency review for an appropriate time thereafter.

CHAPTER 161

(Com. Sub. for S. B. 175 - By Senator Maynard)

[Passed March 6, 2019; in effect from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §64-5-1 and §64-5-2 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to collection and exchange of data related to overdoses; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to behavioral health centers licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to assisted living residences; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to
food manufacturing facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to newborn screening system; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment—office-based, medication-assisted treatment; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; and authorizing the Health Care Authority to promulgate a legislative rule relating to cooperative agreement approval and compliance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §16-5T-5 of this code, relating to the Department of Health and Human Resources (collection and exchange of data related to overdoses, 69 CSR 14), is authorized with the following amendment:

On page 4, by striking out all of subsection 2.16 and inserting a new subsection to read as follows:

“2.16. “Overdose” means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death believed to be caused by abuse and misuse of prescription or illicit drugs or by substances that a layperson would reasonably believe to be a drug”.

(b) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §27-9-1 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on December 6, 2018, relating to the Department of Health and Human Resources (behavioral health centers licensure, 64 CSR 11), is authorized with the following amendment:

On page 22, by adding a new subsection 4.11 to read as follows:

‘4.11 For the purposes of substance use disorder services, if a provider is enrolled to accept West Virginia Medicaid and is authorized to provide behavioral health services in its state, the Office of Health Facility Licensure and Certification may through reciprocity authorize it as a West Virginia Behavioral Health Center under this rule.’

On page 48, subdivision 9.1.2., by deleting the words “assessment and”.

(c) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §16-5D-5 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2018, relating to the Department of Health and Human Resources (assisted living residences, 64 CSR 14), is authorized with the following amendment:

On page 42, subdivision 11.8.1., by striking out the words “federal or state law or this rule” and inserting in lieu thereof the words “subdivision 11.8.2., of this rule”.

(d) The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2018, relating to the Department of Health and Human Resources (food establishments, 64 CSR 17), is authorized.
(e) The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2018, relating to the Department of Health and Human Resources (food manufacturing facilities, 64 CSR 43), is authorized.

(f) The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §16-1-4 of this code, relating to the Department of Health and Human Resources (newborn screening system, 64 CSR 91), is authorized with the following amendment:

On page 5, after subsection 5.29 by adding the following:

5.30. Lysosomal Storage Disorders;

5.31. X-Linked Adrenoleukodystrophy, X-ALD; and

5.32. Spinal Muscular Atrophy, SMA.

(g) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §16-5Y-1 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2018, relating to the Department of Health and Human Resources (medication-assisted treatment—office-based medication-assisted treatment, 69 CSR 12), is authorized with the following amendments:

On page 39, by inserting a subsection, 22.9 to read as follows, “Each OBMAT program shall provide or make referrals for each patient to obtain contraceptive drugs, devices or procedures.

(h) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §16-5H-9 of this
code, relating to the Department of Health and Human Resources (chronic pain management clinic licensure, 69 CSR 8), is authorized.


1 The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §16-29B-28 of this code, relating to the Health Care Authority (cooperative agreement approval and compliance, 65 CSR 6), is authorized.

CHAPTER 162

(S. B. 177 - By Senator Maynard)

[Passed January 31, 2019; in effect from passage.]
[Approved by the Governor on February 14, 2019.]

AN ACT to amend and reenact §64-6-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Fire Commission to promulgate a legislative rule relating to the State Building Code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire Commission.

1 The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §29-3-5b of this code, relating to the Fire Commission (State Building Code, 87 CSR 4), is authorized.
AN ACT to amend and reenact §64-7-1, §64-7-2, and §64-7-3 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies under the Department of Tax and Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the Commissioner of the Tax Division of the Department of Revenue and the Commissioner of the Division of Labor of the Department of Commerce, the Commissioner of the Insurance Commission of the Department of Revenue, the Commissioner of the Division of Motor Vehicles of the Department of Transportation, the Commissioner of the Bureau of Employment Programs, and the Office of the Governor; authorizing the State Tax Department to promulgate a legislative rule relating to payment of taxes by electronic funds transfer; authorizing the State Tax Department to promulgate a legislative rule relating to aircraft operated under a fractional ownership program; authorizing the State Tax Department to promulgate a legislative rule relating to citizen tax credit for property taxes paid; authorizing the State Tax Department to promulgate a legislative rule relating to administration of tax on purchases of wine and liquor inside and outside of municipalities; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between Tax Division and Division of Environmental
Protection; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the State Tax Division and the Alcohol Beverage Control Administration; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information pursuant to written agreement; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the State Tax Department and the West Virginia Lottery; authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information agreement between the State Tax Department and the Office of the State Fire Marshal; authorizing the Lottery Commission to promulgate a legislative rule relating to West Virginia Lottery sports wagering rule; and authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.

(a) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §11-10-5 of this code, relating to the State Tax Department (exchange of information agreement between the Commissioner of the Tax Division of the Department of Revenue and the Commissioner of the Division of Labor of the Department of Commerce, the Commissioner of the Insurance Commission of the Department of Revenue, the Commissioner of the Division of Motor Vehicles of the Department of Transportation, the Commissioner of the Bureau of Employment Programs and the Office of the Governor, 110 CSR 50D), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §11-10-5t of this
code, modified by the State Tax Department to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on December 6,
2018, relating to the State Tax Department (payment of
taxes by electronic funds transfer, 110 CSR 10F), is
authorized.

(c) The legislative rule filed in the State Register on July
27, 2018, authorized under the authority of §11-15-9p of
this code, relating to the State Tax Department (aircraft
operated under a fractional ownership program, 110 CSR
15K), is authorized.

(d) The legislative rule filed in the State Register on July
27, 2018, authorized under the authority of §11-21-21 of
this code, relating to the State Tax Department (citizen tax
credit for property taxes paid, 110 CSR 21B), is authorized.

(e) The legislative rule filed in the State Register on July
27, 2018, authorized under the authority of §60-3A-21 of
this code, relating to the State Tax Department
(administration of tax on purchases of wine and liquor
inside and outside of municipalities, 110 CSR 49), is
authorized.

(f) The legislative rule filed in the State Register on July
27, 2018, authorized under the authority of §11-10-5 of this
code, relating to the State Tax Department (exchange of
information agreement between Tax Division and Division
of Environmental Protection, 110 CSR 50A), is authorized.

(g) The legislative rule filed in the State Register on July
27, 2018, authorized under the authority of §11-10-5 of this
code, relating to the State Tax Department (exchange of
information agreement between the State Tax Division and
the Alcohol Beverage Control Administration, 110 CSR
50B), is authorized.

(h) The legislative rule filed in the State Register on July
27, 2018, authorized under the authority of §11-10-5 of this
code, relating to the State Tax Department (exchange of information pursuant to written agreement, 110 CSR 50C), is authorized.

(i) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §11-10-5 of this code, relating to the State Tax Department (exchange of information agreement between the State Tax Department and the West Virginia Lottery, 110 CSR 50E), is authorized.

(j) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §11-10-5 of this code, relating to the State Tax Department (exchange of information agreement between the State Tax Department and the Office of the State Fire Marshal, 110 CSR 50F), is authorized.

§64-7-2. Lottery Commission.

The legislative rule filed in the State Register on October 4, 2018, authorized under the authority of §29-22D-4 of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 3, 2018, relating to the Lottery Commission (West Virginia Lottery sports wagering rule, 179 CSR 9), is authorized.

§64-7-3. Racing Commission.

The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §19-23-6 of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 28, 2018, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized.
AN ACT to amend and reenact §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, and §64-9-11 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Athletic Commission to promulgate a legislative rule relating to administrative rules of the West Virginia State Athletic Commission; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to industrial hemp; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to rural rehabilitation loan program; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to captive cervid farming; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farm-to-food bank tax credit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to agritourism; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farmers markets; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to seed certification program; authorizing the Board of Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the Board of Medicine to promulgate a legislative rule relating to...
licensing and disciplinary procedures: physicians; podiatric physicians and surgeons; authorizing the Board of Medicine to promulgate a legislative rule relating to permitting and disciplinary procedures: educational permits for graduate medical interns, residents, and fellows; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to Board of Pharmacy rules for registration of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacy permits; authorizing the Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to rules for the substitution of biological pharmaceuticals; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies, standards, and criteria for the evaluation, approval, and national nursing accreditation of prelicensure nursing education programs; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure, and conduct constituting professional misconduct; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to advanced practice registered nurse licensure requirements; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to scope of professional nursing practice; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the board and supplemental renewal fee for the Center for Nursing; authorizing the Board of Examiners for Registered Professional Nurses to
promulgate a legislative rule relating to dialysis technicians; authorizing the Secretary of State to promulgate a legislative rule relating to filing and formatting rules and related documents and other documents for publication in the State Register; authorizing the Secretary of State to promulgate a legislative rule relating to loan and grant programs under the Help America Vote Act for the purchase of voting equipment, election systems, software, services, and upgrades; authorizing the Secretary of State to promulgate a legislative rule relating to early voting in-person satellite precincts; authorizing the Secretary of State to promulgate a legislative rule relating to notaries public; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to qualifications for the profession of social work; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to code of ethics; and authorizing the Treasurer’s Office to promulgate a legislative rule relating to reporting and claiming unknown and unlocatable interest owners’ reserved interests.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.


1 The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2018, relating to the Athletic Commission (administrative rules of the West Virginia State Athletic Commission, 177 CSR 1), is authorized.


1 (a) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §19-9-2 of this
code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2018, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §19-12E-7 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2018, relating to the Commissioner of Agriculture (industrial hemp, 61 CSR 29), is authorized with the following amendments:

On page 4, section 4, by inserting a new subsection 4.1 to read as follows:

4.1. Within 60 days of being issued a license, the licensee shall certify to the Commissioner that he or she has provided a copy of that license to both the sheriff of the county in which the hemp is being grown and the local detachment of the West Virginia State Police.

And,

By renumbering the remaining subsections.

(c) The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §19-1-11 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2018, relating to the Commissioner of Agriculture (rural rehabilitation loan program, 61 CSR 33), is authorized.

(d) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §19-2H-12 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4,
37 2018, relating to the Commissioner of Agriculture (captive cervid farming, 61 CSR 34), is authorized with the following amendment:

40 On page 1, subsection 1.6, after the word “Standards” by inserting the words “effective June 13, 2012,”.

(e) The legislative rule filed in the State Register on January 9, 2018, authorized under the authority of §11-13DD-5 of this code, relating to the Commissioner of Agriculture (farm-to-food bank tax credit, 61 CSR 36), is authorized with the following amendment:

47 On page 4, after subdivision 5.6.b. by inserting a new subsection 5.7. to read as follows:

5.7. All applications for tax credits must be received by the Department of Agriculture no later than January 31 of the year following the year in which the donation was made.

(f) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §19-36-1 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2018, relating to the Commissioner of Agriculture (agritourism, 61 CSR 37), is authorized.

(g) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §19-35-4 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2018, relating to the Commissioner of Agriculture (farmers markets, 61 CSR 38), is authorized with the following amendment:

67 On page 8, by striking out paragraph “11.2.a.” in its entirety and renumbering the remaining paragraphs accordingly.
(h) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §19-16-3a of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2018, relating to the Commissioner of Agriculture (seed certification program, 61 CSR 39), is authorized.


The legislative rule filed in the State Register on July 24, 2018, authorized under the authority of §30-35-4 of this code, modified by the Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 20, 2018, relating to the Board of Licensed Dietitians (licensure and renewal requirements, 31 CSR 1), is authorized.

§64-9-4. Board of Medicine.

(a) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §30-3-7 of this code, relating to the Board of Medicine (licensing and disciplinary procedures: physicians; podiatric physicians and surgeons, 11 CSR 1A), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §30-3-7 of this code, relating to the Board of Medicine (permitting and disciplinary procedures: educational permits for graduate medical interns, residents, and fellows, 11 CSR 12), is authorized.


The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §30-14-14 of this code, relating to the Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 1), is authorized with the following amendment:
§64-9-6. Board of Pharmacy.

(a) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §30-5-7 of this code, relating to the Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §30-5-7 of this code, relating to the Board of Pharmacy (board of pharmacy rules for registration of pharmacy technicians, 15 CSR 7), is authorized with the following amendments:

On page 5, subsection 4.2 after the words, “minimum of” by striking out “960” and inserting in lieu thereof “500”;

On page 5, subsection 4.2 after the words, “within a” by striking out “15” and inserting in lieu thereof “12”;

On page 5, subsection 4.3 after the words, “a pharmacy in a” by striking out “960” and inserting in lieu thereof “500”;

On page 6, subdivision 4.4.c after the word, “Within” by striking out “15” and inserting in lieu thereof “12”;

And,

On page 6, subdivision 4.4.e after the words “within the” by striking out “15” and inserting in lieu thereof “12”.

(c) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §30-5-7 of this code, relating to the Board of Pharmacy (regulations governing pharmacy permits, 15 CSR 15), is authorized.

(d) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §30-5-7 of this
code, relating to the Board of Pharmacy (regulations
governing pharmacists, 15 CSR 16), is authorized.

(e) The legislative rule filed in the State Register on
November 16, 2018, authorized under the authority of §30-
5-12c of this code, modified by the Board of Pharmacy to
meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on November
16, 2018, relating to the Board of Pharmacy (rules for the
substitution of biological pharmaceuticals, 15 CSR 17), is
authorized.

§64-9-7. Real Estate Appraiser Licensing and Certification
Board.

The legislative rule filed in the State Register on July
27, 2018, authorized under the authority of §30-38-9 of this
code, modified by the Real Estate Appraiser Licensing and
Certification Board to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the State
Register on October 3, 2018, relating to the Real Estate
Appraiser Licensing and Certification Board (requirements
for licensure and certification, 190 CSR 2), is authorized
with the following amendments:

On page 3, subdivision 4.1.d. after the word
“misdemeanor” by striking out the words “involving moral
turpitude” and inserting in lieu thereof the following: “that
bears a rational nexus to the occupation requiring
licensure”;

On page 29, subdivision 8.2.c. after the word
“misdemeanor by striking out the words “involving moral
turpitude” and inserting in lieu thereof the following: “that
bears a rational nexus to the occupation requiring licensure;

And,

On page 30, subdivision 9.2.f. after the word
“misdemeanor” by striking out the words “involving moral
turpitude” and inserting in lieu thereof the following: “that bears a rational nexus to the occupation requiring licensure.


(a) The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §30-7-4 of this code, modified by the Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 29, 2018, relating to the Registered Professional Nurses (policies, standards, and criteria for the evaluation, approval and national nursing accreditation of prelicensure nursing education programs, 19 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §30-5-7 of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 28, 2018, relating to the Board of Examiners for Registered Professional Nurses (requirements for registration and licensure and conduct constituting professional misconduct, 19 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §30-7-4 of this code, relating to the Board of Registered Professional Nurses (advanced practice registered nurse licensure requirements, 19 CSR 7), is authorized.

(d) The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §30-7-4 of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2018, relating to the Board of Examiners for Registered Professional Nurses
(scope of professional nursing practice, 19 CSR 10), is authorized.

(e) The legislative rule filed in the State Register on July 26, 2018, authorized under the authority of §30-7-4 of this code, modified by the Board of Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 28, 2018, relating to the Board of Registered Professional Nurses (fees for services rendered by the board and supplemental renewal fee for the center for nursing, 19 CSR 12), is authorized.

(f) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §30-7C-7 of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 28, 2018, relating to the Board of Examiners for Registered Professional Nurses (dialysis technicians, 19 CSR 13), is authorized.

§64-9-9. Secretary of State.

(a) The legislative rule filed in the State Register on July 6, 2018, authorized under the authority of §29A-2-6 of this code, relating to the Secretary of State (filing and formatting rules and related documents and other documents for publication in the State Register, 153 CSR 6), is authorized with the following amendment:

On page 4, subdivision 5.1, after the words “New series rules” by striking out the word “may” and inserting in lieu thereof the word “shall”.

(b) The legislative rule filed in the State Register on July 10, 2018, authorized under the authority of §3-1-48 of this code, relating to the Secretary of State (loan and grant programs under the Help America Vote Act (HAVA) for the purchase of voting equipment, election systems, software, services, and upgrades, 153 CSR 10), is authorized.
(c) The legislative rule filed in the State Register on July 10, 2018, authorized under the authority of §3-3-2a of this code, relating to the Secretary of State (early voting in-person satellite precincts, 153 CSR 13), is authorized with the following amendment:

On page 3, subsection 5.5, after the words “If more than one satellite precinct” by striking the words “locations are” and inserting in lieu thereof the words “location is”.

(d) The legislative rule filed in the State Register on July 30, 2018, authorized under the authority of §39-4-25 of this code, relating to the Secretary of State (notaries public, 153 CSR 46), is authorized.


(a) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §30-30-6 of this code, modified by the Board of Social Work Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2018, relating to the Board of Social Work Examiners (qualifications for the profession of social work, 25 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 23, 2018, authorized under the authority of §30-30-6 of this code, relating to the Board of Social Work (code of ethics, 25 CSR 7), is authorized.

§64-9-11. Treasurer’s Office.

The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §37B-2-7 of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2018, relating to the Treasurer’s Office (reporting and claiming unknown and unlocatable interest owners reserved interests, 112 CSR 16), is authorized.
AN ACT to amend and reenact §64-10-1, §64-10-2, and §64-10-3 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Division of Labor to promulgate a legislative rule relating to wage payment and collection; authorizing the Division of Labor to promulgate a legislative rule relating to child labor; authorizing the Division of Labor to promulgate a legislative rule relating to regulation of heating, ventilating, and cooling work; authorizing the Office of Miners’ Health, Safety, and Training to promulgate a legislative rule relating to a rule governing the safety of those employed in and around surface mines in West Virginia; authorizing the Office of Miners’ Health, Safety, and Training to promulgate a legislative rule relating to a rule governing the submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia; authorizing the Office of Miners’ Health, Safety, and Training to promulgate a legislative rule relating to rules for operating diesel equipment in underground mines in West Virginia; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to rules for Cabwaylingo State Forest trail system two-year pilot project permitting ATVs and ORVs.
Be it enacted by the Legislature of West Virginia:

ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Division of Labor.

(a) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §21-5-13 of this code, relating to the Division of Labor (wage payment and collection, 42 CSR 5), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §21-6-11 of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2018, relating to the Division of Labor (child labor, 42 CSR 9), is authorized.

(c) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §21-16-5 of this code, relating to the Division of Labor (regulation of heating, ventilating, and cooling work, 42 CSR 34), is authorized.


(a) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §22A-1-38 of this code, relating to the Office of Miners’ Health, Safety and Training (rule governing the safety of those employed in and around surface mines in West Virginia, 56 CSR 3), is authorized with the following amendment:

On page 58, subdivision 40.5.6., after the words “stand to the”, by inserting the word “side”.

(b) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §22A-1-6 of this code, relating to the Office of Miners’ Health, Safety, and
Training (rule governing the submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia, 56 CSR 8), is authorized.

(c) The legislative rule filed in the State Register on July 25, 2018, authorized under the authority of §22A-2A-308 of this code, relating to the Office of Miners’ Health, Safety, and Training (rules for operating diesel equipment in underground mines in West Virginia, 56 CSR 23), is authorized.

§64-10-3. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §20-2-23a of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 1, 2018, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized with the following amendment:

On page 19, after subsection 14.6.1., by striking out all of section 15, and renumbering the remaining sections accordingly.

(b) The legislative rule filed in the State Register on July 27, 2018, authorized under the authority of §20-3-3a of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 1, 2018, relating to the Division of Natural Resources (rules for Cabwaylingo State Forest trail system two-year pilot project permitting ATVs and ORVs, 58 CSR 36), is authorized.
CHAPTER 166

(Com. Sub. for S. B. 240 - By Senators Maynard, Trump, Cline and Swope)

[Passed February 11, 2019; in effect from passage.]
[Approved by the Governor on February 19, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §64-12-1, §64-12-2, §64-12-3, §64-12-4, §64-12-5, §64-12-6, and §64-12-7, all relating generally to repealing certain legislative rules promulgated by certain agencies, boards, and commissions which are no longer authorized or are obsolete; authorizing certain agencies and commissions under the Department of Administration, Department of Environmental Protection, Department of Military Affairs and Public Safety, Department of Tax and Revenue, Department of Transportation, miscellaneous agencies, boards, and commissions, and the Bureau of Commerce to repeal certain legislative rules; repealing the Department of Administration legislative rule relating to the state Purchasing Card Program; repealing the Department of Environmental Protection legislative rule relating to abandoned mine lands reclamation; repealing the Department of Environmental Protection legislative rule relating to certification of gas wells; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to handbook of inmate rules and procedures; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to furlough program for regional jails; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to work program for regional
jail inmates; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to West Virginia minimum standards for construction, operation, and maintenance of jails; repealing the Insurance Commission legislative rule relating to health insurance benefits for temporomandibular and craniomandibular disorders; repealing the Insurance Commission legislative rule relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies; repealing the Insurance Commission legislative rule relating to external review of coverage denials; repealing the Insurance Commission legislative rule relating to small employer eligibility requirements; repealing the Division of Motor Vehicles legislative rule relating to eligibility for reinstatement following suspension or revocation of driving privileges; repealing the Board of Social Work Examiners legislative rule relating to applications; and repealing the Division of Labor legislative rule relating to the Safety Glazing Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. REPEAL OF UNAUTHORIZED AND OBSOLETE RULES.

§64-12-1. Department of Administration.

1 The legislative rule effective March 18, 2002, authorized under the authority of §12-3-10a of this code, relating to the Department of Administration (state Purchasing Card Program, 148 CSR 7), is repealed.

§64-12-2. Department of Environmental Protection.

1 (a) The legislative rule effective June 1, 1995, authorized under the authority of §22-1-3 of this code, relating to the Department of Environmental Protection (abandoned mine lands reclamation rule, 59 CSR 1), is repealed.

5 (b) The legislative rule effective May 10, 2001, authorized under the authority of §22-1-3 of this code, relating to the Department of Environmental Protection (certification of gas wells, 35 CSR 7), is repealed.
§64-12-3. Department of Military Affairs and Public Safety.

(a) The legislative rule effective October 8, 1994, authorized under the authority of §31-20-5(v) of this code, relating to the Regional Jail and Correctional Facility Authority (handbook of inmate rules and procedures, 94 CSR 5), is repealed.

(b) The legislative rule effective March 21, 2008, authorized under the authority of §31-20-29 of this code, relating to the Regional Jail and Correctional Facility Authority (furlough program for regional jails, 94 CSR 6), is repealed.

(c) The legislative rule effective April 28, 2014, authorized under the authority of §31-20-10(h) of this code, relating to the Regional Jail and Correctional Facility Authority (criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority, 94 CSR 7), is repealed.

(d) The legislative rule effective March 21, 2008, authorized under the authority of §31-20-31 of this code, relating to the Regional Jail and Correctional Facility Authority (work program for regional jail inmates, 94 CSR 8), is repealed.

(e) The legislative rule effective June 3, 1996, authorized under the authority of §31-20-9 of this code, relating to the Regional Jail and Correctional Facility Authority (West Virginia minimum standards for construction, operation, and maintenance of jails, 95 CSR 1), is repealed.

§64-12-4. Department of Tax and Revenue.

(a) The legislative rule effective May 31, 1991, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (health insurance benefits for temporomandibular and craniomandibular disorders, 114 CSR 29), is repealed.
(b) The legislative rule effective April 29, 2008, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (guaranteed loss ratios as applied to individual sickness and accident insurance policies, 114 CSR 31), is repealed.

c) The legislative rule effective July 1, 2002, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (external review of coverage denials, 114 CSR 58), is repealed.

d) The legislative rule effective May 6, 2005, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (small employer eligibility requirements, 114 CSR 73), is repealed.

§64-12-5. Department of Transportation.

The legislative rule effective April 2, 1986, authorized under the authority of §17A-2-9 of this code, relating to the Division of Motor Vehicles (eligibility for reinstatement following suspension or revocation of driving privileges, 91 CSR 16), is repealed.

§64-12-6. Miscellaneous agencies, boards, and commissions.

The legislative rule effective July 1, 2013, authorized under the authority of §30-30-6 of this code, relating to the Board of Social Work Examiners (applications, 25 CSR 4), is repealed.


The legislative rule effective August 6, 1971, authorized under the authority of §47-5-1 of this code, relating to the Division of Labor (Safety Glazing Act, 42 CSR 13), is repealed.
AN ACT to amend and reenact §64-7-4 of the Code of West Virginia, 1931, as amended, relating to authorizing the Office of the Insurance Commissioner to promulgate a legislative rule relating to HIV testing; and eliminating outdated testing protocols.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-4. Office of the Insurance Commissioner.

The legislative rule filed in the State Register on April 3, 2003, authorized under the authority of §33-2-10(a) of this code, relating to standards for AIDS-related underwriting questions and AIDS testing in connection with applications for life or health insurance policies (AIDS Regulations, 114 CSR 27) is authorized with the following amendment:

“5.9. The testing is required to be administered on a nondiscriminatory basis for all individuals in the same underwriting class. No proposed insured may be denied coverage or rated a substandard risk on the basis of HIV testing unless acceptable testing protocol is followed including the use of FDA-licensed tests.”
5.10. If any confirmatory test produces a negative result, the testing ceases and the proposed insured cannot be denied coverage based on AIDS-related testing.”

CHAPTER 168

(H. B. 2853 - By Delegates Higginbotham, Jennings, Skaff, Queen, Phillips, Bibby, Wilson, Atkinson and Byrd)

[Passed March 7, 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 §10-1-14a, relating to establishing the West Virginia Program for Open Education Resources; defining open education resource materials; providing duties of Library Commission; and requiring annual report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-14a. West Virginia Program for Open Education Resources; material description.

(a)(1) The State Library Commission shall establish the West Virginia Program for Open Education Resources to encourage and facilitate the use of open education resource materials in both higher education and kindergarten through 12th grade in West Virginia schools.

(2) “Open education resource materials” means teaching, learning and resource materials in any medium, digital or otherwise, that reside in the public domain or have been released under an open license that permits low cost
access, use, adaptation and redistribution by others with no
or limited restrictions.

(b) The Library Commission, in consultation with the
Higher Education Policy Commission, the West Virginia
Council for Community and Technical College Education
and the State Superintendent of Schools, or his or her
designee, shall:

(1) Ascertain what institutions or faculty are currently
using OER material.

(2) Identify material currently associated with core
general education courses and readily available for use by
faculty and institutions;

(3) Identify any statutory or other impediments which
interfere with selection and use of OER material by
administrators or teachers at all levels of instruction in West
Virginia schools;

(4) Identify sources of potential grants for funding for
teachers and institutions to use open education resources for
classes and courses, and propose a competitive application
system to award grant funding for those faculty and
institutions seeking to use the materials;

(5) Establish a digital clearing house that will function
as a publicly-accessible database for material;

(6) Develop strategies to leverage further open resource
material to benefit higher education institutions and school
systems, as well as private and foundation support for the
project; and

(7) Report no later than July 1st of each year the
program’s findings, progress and recommendations to the
Legislative Manager, the Governor, and the chairs of the
Legislature’s House and Senate Committees on Education.
AN ACT to amend and reenact §38-14-2, §38-14-3, §38-14-4, §38-14-5, §38-14-7, §38-14-8, and §38-14-9 of the Code of West Virginia, 1931, as amended, all relating to modernizing the self-service storage lien law; modifying late fees; redefining certain terms; providing modern methods of satisfying a self-service storage lien; and providing a new effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

§38-14-2. Definitions.

As used in this article, unless the context clearly requires otherwise:

1. “Default” means the failure by the occupant to perform on time any obligation or duty set forth in the rental agreement or this article;

2. “Last known address” means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address;

3. “Leased space” means the individual storage space at the self-service storage facility which is rented to an occupant pursuant to a rental agreement;
(4) “Occupant” means a person, a sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement;

(5) “Operator” means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent, or any other person authorized to manage the facility. The operator is not a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;

(6) “Personal property” means movable property, not affixed to land. Personal property includes goods, wares, merchandise, motor vehicles, trailers, watercraft, and household items and furnishings;

(7) “Rental agreement” means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of leased space at a self-service storage facility;

(8) “Self-service storage facility” means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a “self-service” basis; and

(9) “Verified mail” means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.


(a) The operator has a lien on all personal property stored within each leased space for agreed rent, labor, late fees, and other charges and for expenses reasonably incurred in its sale or disposition pursuant to this article. The lien attaches as of the date the personal property is stored within each leased space and remains a lien until the occupant has satisfied the terms of the rental agreement.
(b) In the case of any motor vehicle or watercraft which is subject to a lien previously recorded on the certificate of title, the operator has a lien on the vehicle or watercraft as long as the motor vehicle or watercraft remains stored within the leased space.

c) The rental agreement shall contain:

(1) A statement advising the occupant of the existence of the lien and that the personal property stored within the leased space may be sold to satisfy the lien if the occupant is in default;

(2) A statement advising the occupant that personal property stored in the leased space may be towed or removed from the self-service storage facility if the personal property is a motor vehicle, trailer, or watercraft and the occupant is in default for more than 60 days; and

(3) A statement advising the occupant that a sale of personal property stored in the leased space to satisfy the lien if the occupant is in default may be advertised:

(A) In a newspaper of general circulation in the jurisdiction where the sale is to be held or where the self-service storage facility is located;

(B) By electronic mail or text; or

(C) On an online website.

§38-14-4. Late fees.

The operator may charge a late fee not to exceed $20 or 20 percent of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of five days or more.

§38-14-5. Enforcement of lien.

(a)(1) If the occupant is in default for a period of more than 60 days, the operator may enforce the lien by selling
the personal property stored in the leased space at a public
sale or dispose of the personal property if the operator can
demonstrate by photographs or other images and affidavit
of a knowledgeable and credible person that the personal
property lacks a value sufficient to cover the reasonable
expense of a public auction plus the amount of the self-
service storage lien.

(2) Proceeds from the sale shall be applied to satisfy the
lien, and any surplus shall be disbursed as provided in
subsection (e) of this section.

(b)(1) Before conducting a sale under subsection (a) of
this section, the operator shall, subject to subdivision (2) of
this subsection, notify the occupant of the default by hand
delivery, verified mail, electronic mail, or text at the
occupant’s last known address.

(2)(A) The operator may not notify the occupant of the
default by electronic mail unless:

(i) The rental agreement specifies, in bold type, that
notice may be given by electronic mail or text; and

(ii) The occupant provides the occupant’s initials next
to the statement in the rental agreement specifying that
notice of default may be given by electronic mail or text.

(B) If the operator notifies the occupant of the default
by electronic mail or text at the occupant’s last known
address and does not receive a response, return receipt, or a
confirmation of delivery, the operator shall send the notice
of default to the occupant by hand delivery or by verified
mail to the occupant’s last known postal address.

(C) Additional requirements for members of the military
apply under the Soldiers and Sailors Relief Act, 50 U.S.C.
§§3901-4043.

(3) The notice shall include:
A statement that the contents of the occupant’s leased space are subject to the operator’s lien;

A statement of the operator’s claim, indicating the charges due on the date of the notice, the amount of any additional charges which will become due before the date of sale, and the date those additional charges will become due;

A demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed;

A statement that unless the claim is paid within the time stated, the contents of the occupant’s space will be sold at a specified time and place; and

The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice.

Subject to paragraph (B) of this subdivision, at least three days before conducting a sale under this section, the operator shall advertise the time, place, and terms of the sale:

(i) In a newspaper of general circulation in the jurisdiction where the sale is to be held;

(ii) By electronic mail; or

(iii) On an online website.

The operator may not advertise the sale in the manner provided under subparagraph (ii) or (iii) of this paragraph unless the occupant provides the occupant’s initials next to the statement in the rental agreement required under this article.

The operator may dispose of the personal property if the operator has complied with subsection (b) of this section and the property has not been purchased.
(d) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant’s personal property.

(e) A sale under this section shall be held at the self-service storage facility where the personal property is stored, on an online auction website, or at any other location reasonably determined by the operator.

(f)(1) If a sale is held under this section, the operator shall:

(A) Satisfy the lien from the proceeds of the sale; and

(B) Mail the balance, if any, by certified mail to the occupant at the occupant’s last known address of the occupant.

(2) (A) If the balance is returned to the operator after the operator mailed the balance in the manner required under paragraph (B), subdivision (1) of this subsection, the operator shall hold the balance for one year after the date of sale for delivery on demand to the operator.

(B) After expiration of the one-year period, the balance is presumed abandoned.

(g) A purchaser in good faith of any personal property sold under this article takes the property free and clear of any rights of persons against whom the lien was valid.

(h) If the operator complies with the provisions of this article, the operator’s liability to the occupant is limited to the net proceeds received from the sale of the personal property less the amount of the operator’s lien.

(i) If an occupant is in default, the operator may deny the occupant access to the leased space.

(j)(1)(A) Notices sent to the operator shall be sent to the self-service storage facility where the occupant’s personal property is stored by hand delivery or verified mail.
(B) Notices to the occupant shall be sent to the occupant at the occupant’s last known address.

(2) Notices shall be considered delivered when:

(A) Deposited with the United States Postal Service or a private delivery service, properly addressed as provided in subsection (b) of this section, with postage prepaid; or

(B) Sent by electronic mail to the occupant’s last known address.

(k)(1) If the occupant is in default for more than 60 days and the personal property stored in the leased space is a motor vehicle, trailer, or watercraft, the operator may have the personal property towed or removed from the self-service storage facility in lieu of a sale authorized under subsection (a) of this section.

(2) The operator is immune from civil liability for any damage to the personal property towed or removed from the self-service storage facility under subdivision (1) of this subsection that occurs after the person that undertakes the towing or removal of the personal property takes possession of the personal property.

(l) If a rental agreement specifies a limit on the value of personal property that may be stored in the occupant’s leased space, the limit is the maximum value of the stored personal property.

(m) Nothing in this article impairs or affects the rights of the parties to create additional rights, duties, and obligations in and by virtue of the rental agreement.

§38-14-7. Duties; care, custody, and control of property.

(a) The operator shall use reasonable care in maintaining the self-service storage facility for the purposes of storage of personal property.
(b) Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in the leased space remains vested in the occupant.

(c) An occupant may not use a self-service storage facility for residential purposes.

(d) An occupant may not store hazardous waste or contraband in the leased space.

§38-14-8. Savings clause.

All rental agreements entered into prior to July 1, 2019, which have not been extended or renewed after that date remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

§38-14-9. Effective date and application of article.

The provisions of this article apply to all rental agreements entered into or extended or renewed after July 1, 2019.

CHAPTER 170

(S. B. 635 - By Senator Smith)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 27, 2019.]
reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend said code by adding thereto a new section, designated §22A-1-43; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section, designated §22A-2-80; to amend and reenact §22A-8-5 of said code; to amend said code by adding thereto a new section, designated §22A-8-10; to amend and reenact §61-3-12 of said code; and to amend said code by adding thereto a new section, designated §61-3B-6, all relating generally to coal mining activities; eliminating the requirement for submission of the community impact statement; requiring review of new mining activity for submission to the Office of Coalfield Community Development; eliminating requirements for submission of certain additional information; requiring the submission of certain information related to land and infrastructure needs upon request of the Office of Coalfield Community Development; requiring and authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to mine subsidence protection for dwelling owners; creating a tax credit for post coal mine site development; adding definitions; delineating eligibility for tax credit for post coal mine site development; specifying application of the tax credit for post coal mine site development; authorizing the Secretary of the Department of Environmental Protection to promulgate rules for permit modification and renewal fees for surface mining operations pursuant to the Water Pollution Control Act; authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to exemptions pursuant to the Aboveground Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine or appeal a violation within 30 days; requiring the Office of Miners’ Health, Safety, and Training Mine Rescue Team be provided to a coal operation where the operation has no mine rescue team available within one hour’s drive; permitting employers to drug test an employee involved in an accident that results in physical injuries or damage to
equipment or property; requiring miners testing positive for drug use to undergo a mandatory minimum six-month suspension; eliminating timing requirements for submission of a detailed mine ventilation plan to the Director of the Office of Miners’ Health, Safety, and Training; authorizing the Director of the Office of Miners’ Health, Safety, and Training to promulgate emergency rules for establishing a course of instruction for apprentice miners; requiring apprentice miners to work at least 90 days in a mine within sight and sound of a mine foreman or assistant foreman; permitting the Director of the Office of Miners’ Health, Safety, and Training to decertify miners who fail to perform daily examinations; authorizing the Director of the Office of Miners’ Health, Safety, and Training to promulgate rules generally; holding mine owners, the state, and person or entities engaged in rescue operations harmless for injury or death resulting from mine trespass; authorizing a temporary exemption from environmental regulations during rescue operations; revoking certifications of persons convicted of mine trespass; removing underground coal mines from those places subject to the crime of unlawful entry of building other than a dwelling; creating the new criminal misdemeanor and felony offenses of mine trespass; establishing penalties for mine trespass including enhanced penalties for bodily injury or death during rescue operations; authorizing increased liability for damages caused during a mine trespass; and exempting lawful activities under the West Virginia and United States Constitutions, and state and federal law from the operation of the mine trespass criminal statute.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.


1 The office has and may exercise the following duties, powers, and responsibilities:
(1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

(2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

(3) To establish a procedure to develop action reports and annual updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

(4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

(6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining; and

(7) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code.

§5B-2A-6. Community impact review.

(a) The office shall, no less frequently than quarterly, either consult with representatives of the department’s Office of Mining and Reclamation or review the department’s permit application database(s) to determine
whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure pursuant to this article.

(b) The provisions of this section shall apply to all surface mining permit applications granted after July 1, 2018.

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county, or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development, or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

(c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) The prospects for the long-term viability of any asset developed under this section;
(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and

(4) The extent to which the community, local, state, or the federal government may participate in the development of assets the community needs to assure its viability.


(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations for which it makes the determination authorized in §5B-2A-6 of this code.

(b) For the purposes of this section, the term “general area” shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, upon request by the office, shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 et seq. of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;
(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature, and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state, and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a Development Office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be construed to modify requirements of §22-3-1 et seq. of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational facility uses. A county commission or other governing body of a county
may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period.

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan.

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010.

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article.

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article.
(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval.

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that:

(A) The property use is compatible with adjacent land uses;

(B) The use satisfies the relevant county or development or redevelopment authority’s anticipated need and market use;

(C) The property has in place necessary infrastructure components needed to achieve the anticipated use;

(D) The use is supported by all other appropriate public agencies;

(E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

(F) The use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions, or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period.
The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment, or planning agencies.

CHAPTER 11. TAXATION.

ARTICLE 28. POST-COAL MINE SITE BUSINESS CREDIT.

§11-28-1. Definitions.

For purposes of this article:

“Business entity” or “person” means an individual, firm, sole proprietorship, partnership, corporation, association, or other entity entitled to a post-coal mine site business credit.

“Coal mining operation” means the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite.

“Post-coal mine site” means property that has remained undeveloped for business purposes, subsequent to coal mining operations on the property within the bonded area of the last issued coal mine permit.

“Principal place of business” means the physical location from which the entity’s direction, control, and coordination of the operations of the business are primarily exercised, with consideration given, but not limited to:

(1) The physical location at which the primary executive and administrative headquarters of the entity is located; and

(2) From which the management of overall operations of the entity is directed.

“Undeveloped for business purposes” means land has been previously used for coal mining operations and has not
been built or developed for use for other activities in the commercial or manufacturing sectors of the economy.

§11-28-2. Eligibility for credit.

For those tax years beginning on or after January 1, 2020, a business entity will be allowed a credit against certain taxes imposed by this chapter, as described in §11-28-3 of this code, if the business entity meets the following requirements:

(1) The entity is a corporation, small business corporation, limited liability company, partnership, or unincorporated business entity as defined in this code that also has a principal place of business in the state;

(2) The entity employs at the post-coal mine site a minimum of 10 full-time (32 hours a week or more) employees; and

(3) The entity’s principal place of business is located on a post-coal mine site within this state.

§11-28-3. Application of credit.

(a) Amount of credit. — For those tax years beginning on or after January 1, 2020, an eligible business entity will be allowed a tax credit in the amount of 50 percent of that entity’s capital expenditures (as defined in Section 263 of the United States Internal Revenue Code of 1986, as amended) at the post-coal mine site for the first five taxable years during which the entity’s principal place of business is located on the post-coal mine site within this state. The dollar amount of the credit claimed by an eligible business entity may not exceed the amount of 50 percent of the entity’s state income tax for a single year.

(b) Application of annual credit allowance. — The credit created by this article is allowed as a credit against the taxpayer’s state tax liability applied as provided in subdivisions (1) and (2) of this subsection, and in that order.
(1) Corporation net income taxes. — Any credit is first applied to reduce the taxes imposed by §11-24-1 et seq. of this code for the taxable year.

(2) Personal income taxes. — After application of §11-28-3(b)(1) of this code, any unused credit is next applied as follows:

(A) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership or a limited liability company that is treated as a partnership for federal income tax purposes, then any unused credit (after application of §11-28-3(b)(1) of this code) is allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on the income from business or other activity subject to tax under §11-23-1 et seq. of this code.

(B) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) A credit is not allowed under this section against any employer withholding taxes imposed by §11-21-1 et seq. of this code.

(c) Unused credit. — A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance. If the amount of the allowable credit exceeds the taxpayer’s tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1 et seq. or §11-24-1 et seq. of this code for each of the next 10 taxable years following the year of creation of the tax credit unless sooner used.
(d) **Eligibility requirements.** — Those businesses that benefit from other state economic development programs or incentives that result in a reduction of their income tax liability due shall not be eligible for this tax credit.

(e) **Rule-making authority.** — The State Tax Division shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code. These rules shall include, at a minimum, forms for use in claiming the credit authorized in this article, administration of the credit authorized in this article, and any other matter seen necessary by the State Tax Division for the administration of this article.

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 3. SURFACE AND COAL MINING RECLAMATION ACT.**

§22-3-14. **General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.**

(a) The director shall promulgate separate rules directed toward the surface effects of underground coal mining operations, embodying the requirements in subsection (b) of this section: **Provided,** That in adopting such rules, the director shall consider the distinct difference between surface coal mines and underground coal mines in West Virginia. Such rules may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any rule issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and
reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided,* That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts, or other openings that connect the earth’s surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and rules promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings, and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to §22-3-13 of this code, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes,
and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in §22-3-13(b)(20) of this code;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and groundwater systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines:

Provided, That in recognition of the distinct differences between surface and underground mining the monitoring of water from underground coal mine workings shall be in
(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under §22-3-13 of this code for such effects which result from surface-mining operations: Provided, That the director shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he or she finds imminent danger to inhabitants of the urbanized areas, cities, towns, or communities.
(d) The provisions of this article relating to permits, bonds, insurance, inspections, reclamation and enforcement, public review, and administrative and judicial review are also applicable to surface operations and surface impacts incident to an underground mine with such modifications by rule to the permit application requirements, permit approval, or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface mines and underground mines in West Virginia.

(e) The secretary shall promulgate for review and consideration by the West Virginia Legislature during the regular session of the Legislature, 2020, revisions to legislative rules (38 CSR 2) pertaining to surface owner protection from material damage due to subsidence under this article. The secretary shall specifically consider adoption of the federal standards codified at 30 C.F.R. § 817.121.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

(a) The special revenue fund designated the Water Quality Management Fund established in the State Treasury on July 1, 1989, is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the Water Quality Management Fund. The secretary shall expend the proceeds of the Water Quality Management Fund for the review of initial permit applications, renewal permit applications, and permit issuance activities.
(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of §29A-1-1 et seq. of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in §22-3-13 of this code. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: Provided, That no initial application fee may exceed $15,000 for any facility nor may any permit renewal application fee exceed $5,000. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 et seq. of this code to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in §22-3-1 et seq. of this code. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: Provided, That no person holding a permit for a home aerator of 600 gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: Provided, however, That no annual permit fee may exceed $5,000. The secretary may declare any permit issued pursuant to this article void when the
annual permit fee is more than 90 days past due pursuant to the rules promulgated under this section. Voiding of the permit will only become effective upon the date the secretary mails, by certified mail, written notice to the permittee’s last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the Joint Committee on Government and Finance setting forth the fees established and collected pursuant to this section.

(f) On July 1, 2002, and each year thereafter, a $1,000 fee shall be assessed for permit applications and renewals submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 et seq. of this code. On July 1, 2002, and each year thereafter, a $500 fee shall be assessed for application for permit modifications submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 et seq. of this code. Beginning July 1, 2002 and every year thereafter, an annual permit fee shall be assessed on the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in §22-3-1 et seq. of this code. The annual permit fee shall be collected as follows: $500 for the fiscal year beginning on July 1, 2002, and $1,000 for each fiscal year thereafter. For all other categories of permitting actions pursuant to this article related to surface coal mining operations, the secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 et seq. of this code to establish a schedule of permitting fees.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-3. Definitions.

For purposes of this article:

(1) “Aboveground storage tank” or “tank” or “AST” means a device made to contain an accumulation of more than 1,320 gallons of fluids that are liquid at standard
temperature and pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic, or fiberglass reinforced plastic, which provide structural support, more than 90 percent of the capacity of which is above the surface of the ground, and includes all ancillary pipes and dispensing systems up to the first point of isolation. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for 365 or more days. A device meeting this definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. §265.201 is included in this definition but is not a regulated tank. Notwithstanding any other provision of this code to the contrary, the following categories of devices are not subject to the provisions of this article:

(A) Shipping containers that are subject to state or federal laws or regulations governing the transportation of hazardous materials, including, but not limited to, railroad freight cars subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §20101-2015, as amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R. §§172, 173, or 174;

(B) Barges or boats subject to federal regulation under the United States Coast Guard, United States Department of Homeland Security, including, but not limited to, federal regulations promulgated at 33 C. F. R. 1 et seq. or subject to other federal law governing the transportation of hazardous materials;

(C) Swimming pools;

(D) Process vessels;

(E) Devices containing drinking water for human or animal consumption, surface water or groundwater, demineralized water, noncontact cooling water, or water stored for fire or emergency purposes;
(F) Devices containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

(G) Except when located in a zone of critical concern, a device located on a farm, the contents of which are used exclusively for farm purposes and not for commercial distribution;

(H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier, chlorine contact chamber, batch reactor, etc.);

(I) Empty tanks held in inventory or offered for sale;

(J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to oil or gas production and gathering operations;

(L) Electrical equipment such as transformers, circuit breakers, and voltage regulator transformers;

(M) Devices having a capacity of 210 barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern; and

(N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern: Provided, That all such devices
exempted under subdivisions (M) and (N) of this subdivision must still meet the registration requirements contained in §22-30-4 of this code, the notice requirements contained in §22-30-10 of this code, and the signage requirements contained in §22-30-11 of this code.

(2) “Department” means the West Virginia Department of Environmental Protection.

(3) “First point of isolation” means the valve, pump, dispenser, or other device or equipment on or nearest to the tank where the flow of fluids into or out of the tank may be shut off manually or where it automatically shuts off in the event of a pipe or tank failure.

(4) “Nonoperational storage tank” means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(5) “Operator” means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(6) “Owner” means a person who holds title to, controls, or owns an interest in an aboveground storage tank, including the owner immediately preceding the discontinuation of its use. “Owner” does not mean a person who holds an interest in a tank for financial security unless the holder has taken possession of and operated the tank.

(7) “Person”, “persons”, or “people” means any individual, trust, firm, owner, operator, corporation, or other legal entity, including the United States government, an interstate commission or other body, the state or any agency, board, bureau, office, department, or political subdivision of the state, but does not include the Department of Environmental Protection.

(8) “Process vessel” means a tank that forms an integral part of a production process through which there is a steady,
variable, recurring, or intermittent flow of materials during
the operation of the process or in which a biological,
chemical, or physical change in the material occurs. This
does not include tanks used for storage of materials prior to
their introduction into the production process or for the
storage of finished products or by-products of the
production process.

(9) “Public groundwater supply source” means a
primary source of water supply for a public water system
which is directly drawn from a well, underground stream,
underground reservoir, underground mine, or other primary
sources of water supplies which are found underneath the
surface of the state.

(10) “Public surface water supply source” means a
primary source of water supply for a public water system
which is directly drawn from rivers, streams, lakes, ponds,
impoundments, or other primary sources of water supplies
which are found on the surface of the state.

(11) “Public surface water influenced groundwater
supply source” means a source of water supply for a public
water system which is directly drawn from an underground
well, underground river or stream, underground reservoir,
or underground mine, and the quantity and quality of the
water in that underground supply source is heavily
influenced, directly or indirectly, by the quantity and quality
of surface water in the immediate area.

(12) “Public water system” means:

(A) Any water supply or system which regularly
supplies or offers to supply water for human consumption
through pipes or other constructed conveyances, if serving
at least an average of 25 individuals per day for at least 60
days per year, or which has at least 15 service connections,
and shall include:
(i) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a bathhouse located on coal company property solely for the use of its employees or a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.

(13) “Regulated level 1 aboveground storage tank” or “level 1 regulated tank” means:

(A) An AST located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area, or any AST system designated by the secretary as a level 1 regulated tank; or

(B) An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance” (42 U. S. C. § 9601(14)); or is on EPA’s Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act
(EPCRA), CERCLA, and §112(r) of the Clean Air Act (CAA) (known as the List of Lists) as provided by 40 C. F. R. §§ 355, 372, 302, and 68 in a concentration of one percent or greater, regardless of the AST’s location, except ASTs containing petroleum are not level 1 regulated tanks based solely upon containing constituents recorded on the CERCLA lists; or

(C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or location.

(14) “Regulated level 2 aboveground storage tank” or “level 2 regulated tank” means an AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

(15) “Regulated aboveground storage tank” or “regulated tank” means an AST that meets the definition of a level 1 or level 2 regulated tank.

(16) “Release” means any spilling, leaking, emitting, discharging, escaping, or leaching of fluids from an aboveground storage tank into the waters of the state or escaping from secondary containment.

(17) “Secondary containment” means a safeguard applied to one or more aboveground storage tanks that prevents the discharge into the waters of the state of the entire capacity of the largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary containment, the barrier and containment field must be sufficiently impervious to contain fluids in the event of a release, and may include double-walled tanks, dikes, containment curbs, pits, or drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or holding pond. Earthen dikes and similar containment structures must be designed and constructed to contain, for a minimum of 72 hours, fluid that escapes from a tank.
(18) “Secretary” means the Secretary of the Department of Environmental Protection, or his or her designee.

(19) “Source water protection area” for a public groundwater supply source is the area within an aquifer that supplies water to a public water supply well within a five-year time of travel and is determined by the mathematical calculation of the locations from which a drop of water placed at the edge of the protection area would theoretically take five years to reach the well.

(20) “Zone of critical concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time of travel of water in the streams to the intake. The width of the zone of critical concern is 1,000 feet measured horizontally from each bank of the principal stream and 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

(21) “Zone of peripheral concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of peripheral concern is determined using a mathematical model that accounts for stream flows, gradient, and area topography. The length of the zone of peripheral concern is based on an additional five-hour time of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates a protection zone of 10 hours above the water intake. The width of the zone of
peripheral concern is 1,000 feet measured horizontally from each bank of the principal stream and 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.


(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary may receive and expend money from the federal government or any other sources to implement this article.

(c) The secretary may revoke any registration or certificate to operate for a significant violation of this article or the rules promulgated hereunder.

(d) The secretary may issue orders, assess civil penalties, institute enforcement proceedings, and prosecute violations of this article as necessary.

(e) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action, or authorize a third party to take corrective action.

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.

(g) The secretary shall promulgate for review and consideration by the West Virginia Legislature in the regular session of the Legislature, 2020, legislative rules to incorporate the relevant provisions of this article in the Groundwater Protection Rules for Coal Mining, 38 CSR 2F, for tanks and devices located at coal mining operations.
CHAPTER 22A. MINERS’ HEALTH, SAFETY, AND TRAINING.

ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; ENFORCEMENT.


(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than $5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator’s history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of §29A-3-1 et seq. of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than $250 for each occurrence of the violation. Any miner issued a violation under this subsection shall either appeal the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not appealed or paid within 30 days shall become delinquent.
Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for purposes of §22A-1-31 of this code.

(4) A civil penalty under subdivision (1) or (2), subsection (a) of this section or subdivision (1) or (2), subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director’s findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the
jury’s findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under §22A-1-15 of this code, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under §22A-1-22(a) or §22A-1-22(b) of this code, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than $5,000 and for a second or subsequent violation assessed a civil penalty of not more than $10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;
(B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;
(C) Operation of a mine in the face of a closure order;
(D) Violations involving an imminent danger;
(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under §22A-1-22 of this code.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least $5,000 and not more than $10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under §22A-1-22(a) or §22A-1-22(b) of this code, any director, officer, or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or confined in jail not more than one year, or both fined and confined. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner’s certification, for a period of not less than one year or for a longer period as may be determined by the director.
(e) Whoever willfully distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and confinement that may be imposed upon a person under subsection (d) of this section.

(f) Any person who willfully violates any safety standard pursuant to this chapter or a rule promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or confined in a state correctional facility not less than one year and not more than five years, or both fined and confined.

(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety and Training Fund. All civil penalty assessments collected under this section shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

§22A-1-35. Mine rescue teams.

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or
(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners’ Health, Safety, and Training Mine Rescue Team shall serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The operator shall contact the office and notify them of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus funds from the West Virginia Office of Miners’ Health, Safety, and Training’s special revenue fund to provide backup mine rescue services.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion, or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide
coverage for more than 70 mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least 40 hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;
(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; and

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire, or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers’ compensation subscription of the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than 1,000 feet inby the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the
rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: *Provided, however,* That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member’s breathing apparatus depletes to 60 atmospheres, or its equivalent.

(l) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;
(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with §22A-1-15 of this code.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators
shall have 24 hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within 30 days of the effective date of this statute: Provided, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator’s mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

§22A-1-43. Hold harmless clause; decision to enter mine.

(a) If any injury or death shall occur to any person who has entered any mine, whether active workings, inactive workings, or abandoned workings, without permission, neither:

(1) The owner of that mine or property; nor

(2) The State of West Virginia or any of its political subdivisions, or any agency operating under color of law thereunder; nor

(3) Any person, organization, or entity involved in any rescue or attempted rescue of such person who has committed an entry without permission, shall be held liable in any court or other forum for such injury or death.
(b) The director is authorized to make the decision on whether a mine is too dangerous, and this decision is not subject to review by a court of this state.

(c) A company shall not be required or ordered to conduct rescue operations.

§22A-1-44. Temporary exemption for environmental regulations.

In the event of an unauthorized entry by any person or persons into any mine whether active workings, inactive workings, or abandoned workings, neither the owner of that mine or property, nor any other person, organization, or entity involved in any rescue or attempted rescue of such person, may be held liable for any violation of any environmental regulation, if such violation occurred as part of any rescue efforts.

ARTICLE 1A. OFFICE OF MINERS’ HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in §22A-1-2 of this code, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, 10-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners’ Health, Safety, and Training:

(A) Amphetamines;

(B) Cannabinoids/THC;

(C) Cocaine;

(D) Opiates;
(E) Phencyclidine (PCP);
(F) Benzodiazepines;
(G) Propoxyphene;
(H) Methadone;
(I) Barbiturates; and
(J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation’s rule, 49 C. F. R. Part 40, which may be amended, from time to time, by legislative rule of the Office of Miners’ Health, Safety, and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. “Random testing” means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons’ Social Security numbers, payroll identification numbers, or other comparable identifying numbers; and

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.
(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer’s out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) Any employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer.

(d) (1) Every employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) Any positive drug or alcohol test of a certified person. However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(2) With respect to any certified person subject to a collective bargaining agreement, the employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:
(A) Any positive drug or alcohol test of a certified person. However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to §22A-1-2 of this code.

(e) Suspension or revocation of a certified person’s certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director’s immediately and temporarily suspending the certified person’s West Virginia certificate until such time as the certified person’s certification is reinstated in the other jurisdiction.

(f) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a
previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: Provided, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a “safety-sensitive position” means an employment position where the employee’s job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person’s certificate pursuant to this article shall be conducted within 60 days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within 40 days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of §22A-1-31 of this code. In addition to the rules and procedures in §22A-1-31 of this code in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet-based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for
violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to §22A-6-14 of this code. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter during the period of the suspension imposed by the Board of Appeals. For all miners determined to have a positive drug or alcohol test as determined pursuant to the provisions of this article, the board shall suspend the miner’s certification card(s) for a minimum of six months from the date of the drug test. This six-month minimum suspension shall also apply to miners who enter into a treatment program after testing positive in a drug test administered pursuant to the provisions of this article and are placed under probationary treatment and testing agreements by the board. The director shall promulgate an emergency rule and legislative rule by July 1, 2019, requiring all miners who have a positive drug or alcohol test shall have their miner certification card(s) suspended for a minimum of six months.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to §29A-5-4 of this code.
ARTICLE 2. UNDERGROUND MINES.

§22A-2-2. Submittal of detailed ventilation plan to director.

(a) A mine operator shall give the director a copy of the United States Department of Labor’s Mine Safety and Health Administration (MSHA)-approved plan and any addenda as soon as the operator receives the approval from MSHA. The MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or state rules.

(b) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners’ representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible.

(c) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addenda thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane-detecting devices; records of examination; maintenance of methane detectors, etc.

(a) The Office of Miners’ Health, Safety, and Training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within 12 weeks after any person is first employed as a miner. It is further the duty and responsibility of the Office of Miners’ Health, Safety, and Training to see that the course is given to all
persons as above provided after their first being employed in any mine in this state. In addition to other enforcement actions available to the director, upon a finding by the director of the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall notify the Board of Coal Mine Health and Safety, which shall cause additional training to occur at the mine addressing such safety issue or issues identified by the director, pursuant to §22A-7-1 et seq. of this code. The Director of the Office of Miners’ Health, Safety, and Training is authorized to promulgate emergency and legislative rules in consultation with the Board of Coal Mine Health and Safety establishing a course of instruction.

(b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first 120 days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that the mine foreman, assistant mine foreman, or experienced miner can effectively respond to cries for help of the apprentice: Provided, That if the apprentice has completed an approved training program as approved by the Board of Coal Mine Health and Safety, this period may be reduced
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by an amount not to exceed 30 days. The location shall be
on the same side of any belt, conveyor, or mining
equipment.

(c) Persons whose duties require them to use an
approved methane-detecting device or other approved
methane detectors shall be examined at least annually as to
their competence by a qualified official from the Office of
Miners’ Health, Safety, and Training and a record of the
examination shall be kept by the operator and the office.
Approved methane-detecting devices and other approved
methane detectors shall be given proper maintenance and
shall be tested before each working shift. Each operator
shall provide for the proper maintenance and care of the
permissible approved methane-detecting device or any
other approved device for detecting methane and oxygen
deficiency by a person trained in the maintenance, and,
before each shift, care shall be taken to ensure that the
approved methane-detecting device or other device is in a
permissible condition and maintained according to
manufacturer’s specifications.


Before the beginning of any shift upon which they shall
perform supervisory duties, the mine foreman or his or her
assistant shall review carefully and countersign all books
and records reflecting the conditions and the areas under
their supervision, exclusive of equipment logs, which the
operator is required to keep under this chapter. The mine
foreman, assistant mine foreman, or fire boss shall visit and
carefully examine each working place in which miners will
be working at the beginning of each shift before any face
equipment is energized and shall examine each working
place in the mine at least once every two hours each shift
while such miners are at work in such places, and shall
direct that each working place shall be secured by props,
timbers, roof bolts, or other approved methods of roof
support or both where necessary to the end that the working
places shall be made safe. The mine foreman or his or her
assistants upon observing a violation or potential violation
of §22A-2-1 et seq. of this code or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself or herself. Should the mine foreman or his or her assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He or she shall place his or her initials, time and the date at or near each place he or she examines. He or she shall also record any dangerous conditions and practices found during his or her examination in a book provided for that purpose.

§22A-2-80. Existing regulations to be revised.

By August 31, 2019, all existing rules or regulations under authority of this article shall be revised to reflect the changes enacted during the 2019 Regular Session of the Legislature.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22A-8-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him or her, and under his or her supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss, or assistant mine foreman or fire boss, may have three persons working with him or her under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: Provided, That a mine foreman, assistant mine foreman, or fire boss supervising apprentices in an area where no coal is being produced or which is outby the
Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it is the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the Office of Miners’ Health, Safety, and Training.

§22A-8-10. Loss of certification for unlawful trespass.

Upon a conviction under the provisions of §61-3B-6 of this code, the certification of any person certified under the provision of §22A-8-1 et seq. of this code, including a safety sensitive certification issued pursuant to 56 CSR 19, shall be deemed revoked and person shall be permanently barred from holding a certification under the provisions of §22A-8-1 et seq. of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment.

If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, storehouse, warehouse, banking house, or any house or building, other
than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than 10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and be fined not exceeding $100.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.

ARTICLE 3B. TREPASS.

§61-3B-6. Mine trespass; penalties.

(a) A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon conviction thereof shall be imprisoned in a correctional facility not less than one year and nor more than 10 years and shall be fined not less than $5,000 nor more than $10,000: Provided, That for any conviction pursuant to this subsection, any inactive or abandoned underground workings must be either: (1) Sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense.
(b) A person who willfully enters a surface coal mine, whether active workings, inactive workings or abandoned workings, without permission, and with the intent to commit a felony or any larceny, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than one week and not more than one month and shall be fined not less than $1,000 nor more than $5,000. For a second conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than one year and not more than five years and shall be fined not less than $5,000 nor more than $10,000. For a third or subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than five years and not more than 10 years and shall be fined not less than $10,000, nor more than $25,000.

(c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than one year and shall be fined not less than $1,000 nor more than $5,000: Provided, That such jail term shall include actual confinement of not less than seven days.

(d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than two nor more than 10 years and shall be fined not less than $5,000 nor more than $10,000.
(e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than three nor more than 15 years and shall be fined not less than $10,000 nor more than $25,000.

(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass in violation of this section is liable to the property owner in the amount of twice the amount of such damage.

(g) The terms “mine”, “active workings”, “inactive workings”, and “abandoned workings” have the same meaning ascribed to such terms as set forth in §22A-1-2 of this code.

(h) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

CHAPTER 171

(S. B. 596 - By Senators Weld, Stollings, Baldwin, Boso, Cline, Sypolt, Tarr and Maroney)

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

AN ACT to amend and reenact §17A-2-12a of the Code of West Virginia, 1931, as amended, relating to the ability of applicants to make voluntary contributions of specified dollar
amounts to the West Virginia Department of Veterans Assistance on forms created by the Division of Motor Vehicles; and adding thereto a category for unspecified amounts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-12a. Commissioner of Motor Vehicles — commissioner shall prescribe forms providing for veteran contributions.

(a) Notwithstanding §17A-2-12 of this code, the commissioner shall prescribe and provide suitable forms of application which provide the following applicants the ability to make a contribution of $5, $10, or other amount to the West Virginia Department of Veterans Assistance:

(1) Applicants for original or renewal driver’s licenses or identification cards; and

(2) Applicants for a renewal of a vehicle registration.

(b) A contribution under §17A-2-12a(a) of this code shall be added, as appropriate, to the regular fee for:

(1) An original or renewal driver’s license or identification card; and

(2) A renewal of a vehicle registration.

(c) Contributions under §17A-2-12a(a) of this code shall be used exclusively for purposes set forth in §9A-1-1 et seq. of this code.

(d) The division shall determine on a monthly basis the total amount collected under this section and report and transfer said amount to the State Treasurer. The State Treasurer shall transfer the amount collected under this section to the West Virginia Department of Veterans Assistance.
(e) The West Virginia Department of Veterans Assistance shall reimburse the Motor Vehicle Fees Fund for the actual costs incurred by the division in the administration of this section.

CHAPTER 172

(S. B. 658 - By Senator Romano)

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

AN ACT to amend and reenact §17A-6E-4 of the Code of West Virginia, 1931, as amended, relating to motor vehicle salesperson licenses; and modifying the felony disqualification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.

§17A-6E-4. Eligibility and issuance of license.

(a) The division may not issue any person a motor vehicle salesperson license unless the applicant:

1. Is employed by a licensed West Virginia dealer who verifies the employment;

2. Completes the application for a license on the form prescribed by the division, fully completed, signed and attested to by the applicant, including, but not limited to, the applicant’s:

3. Full name;

4. Social Security number;
(C) Residence and mailing address;

(D) Name of employing dealership;

(E) Statement as to whether the applicant has ever had any previous application for a dealer or salesperson license refused in this or any other state or jurisdiction;

(F) Statement as to whether the applicant has been previously licensed as a salesperson in this state or any other state or jurisdiction;

(G) Statement as to whether the applicant has ever had his or her salesperson license or a dealer license suspended or revoked in this state or any other state or jurisdiction;

(H) Statement as to whether the applicant has ever held a dealer license which has been suspended or revoked or has been employed by a dealer which has had its license suspended or revoked;

(I) Statement as to whether the applicant has ever been convicted of a felony or whether the applicant individually or as an owner, partner, officer, or director of a business entity has been convicted of, or pleaded guilty or nolo contendere to, a criminal action, and if so, a written explanation of the conviction;

(J) Statement as to whether or not the applicant owes a child support obligation, owes a child support obligation that is more than six months in arrears, is the subject of a child support related warrant, subpoena, or court order; and

(K) Statement that the applicant has not been found to have done any of the acts which would justify suspension or revocation of a salesperson’s license under §17A-6E-9 of this code;

(3) Submits verification of employment by the employing dealer;
(4) Furnishes a full set of fingerprints to facilitate a background check and other investigation considered necessary by the commissioner;

(5) Pays an initial nonrefundable application fee of $7 for each year the license is valid. Payment of the fee entitles the applicant to one attempt at a written test prescribed by the division. Successful completion of at least 70 percent of the written test is a passing score;

(6) Pays a nonrefundable background investigation fee of $25; and

(7) Is not the subject of a background investigation which reveals criminal convictions or other circumstances for which the commissioner may deny licensure under the provisions of this article.

(b) The division may, upon successful completion of all the requirements contained in subsection (a) of this section, with the exception of the background investigation, issue the applicant a temporary motor vehicle salesperson license. The temporary license is valid for a maximum of 90 days pending issuance of the permanent license endorsement or receipt of an unfavorable background investigation, whichever occurs first.

(c) The division shall refuse to issue the license if the applicant:

(1) Does not provide the necessary documents as determined by the division to establish his or her identity or legal presence in this country;

(2) Has made any false statements of material fact in the application;

(3) Has had his or her privilege to sell vehicles denied, suspended, or revoked by this state or any other state or jurisdiction: Provided, That upon the applicant’s appeal, the commissioner may grant an exemption of this restriction if
the applicant can show that he or she is eligible for reinstatement in his or her previous jurisdiction of licensure;

(4) Has committed a fraudulent act or omission or repeatedly defaulted in financial obligations in connection with the buying, selling, leasing, rental, or otherwise dealing in motor vehicles, recreational vehicles, or trailers;

(5) Has been convicted of a felony: Provided, That upon the applicant’s appeal the commissioner may grant an exemption to this restriction if the felony did not involve a financial transaction involving the sale or purchase of a motor vehicle or the motor vehicle industry;

(6) Is not employed as a salesperson for a motor vehicle dealer licensed in accordance with §17A-6-1 et seq. or §17A-6C-1 et seq. of this code;

(7) Is acting as a salesperson for more than one motor vehicle dealer at the same time without a waiver issued by the commissioner; or

(8) Has a background investigation which reveals criminal convictions or other circumstances for which the commissioner may deny licensure under the provisions of this article.

(d) Willful misrepresentation of any fact in any application or any document in support of the application is a violation of this article.
CHAPTER 173


[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 §17E-1-8a, relating to providing for a restricted commercial driver’s license for employees of designated farm-related service industries; and authorizing the Commissioner of Motor Vehicles to define seasonal periods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-8a. Restricted commercial driver’s license for certain drivers in farm-related service industries.

(a) A restricted commercial driver’s license may be issued to persons without meeting the required knowledge and skill tests for driving a commercial motor vehicle prescribed in §17E-1-9 of this code who are employees of the following designated farm-related service industries:

1. Agrichemical businesses;
2. Custom harvesters;
3. Farm retail outlets and suppliers; and
4. Livestock feeders.
(b) A restricted commercial driver’s license issued pursuant to this section shall meet all of the requirements and restrictions set forth in 49 C.F.R. § 383.3(f), including any seasonal periods defined by the commissioner.

CHAPTER 174

(H. B. 2846 - By Delegates Miller, D. Kelly, Swartzmiller, Robinson, Queen, Hornbuckle, Pack, Malcolm and Pyles)

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to special vehicle registration plates; designating a “Back the Blue” plate in support of law-enforcement personnel; designating a special beekeeper pollinator plate; establishing fees related to plates; and permitting extension of registration fee exemption to military-related special registration plates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division, upon registering a vehicle, shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer, or other motor vehicle.
(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight: Provided, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with number two.

(c) The division may not issue, permit to be issued, or distribute any special registration plates except as follows:

(1) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture, and the Attorney General, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the Supreme Court of Appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the State of West Virginia and the judges of the United States Court of Appeals for the fourth circuit, if any
of the judges are residents of West Virginia, a special
registration plate for a Class A motor vehicle and a special
registration plate for a Class G motorcycle owned by the
official or his or her spouse: Provided, That the division
may issue a Class A special registration plate for each
vehicle titled to the official and a Class G special
registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall
bear any combination of letters and numbers not to exceed
an amount determined by the commissioner and a
designation of the office. Each plate shall supersede the
regular numbered plate assigned to the official or his or her
spouse during the official’s term of office and while the
motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of $15 for
every registration plate issued pursuant to this subdivision,
which is in addition to all other fees required by this chapter.

(3) The division may issue members of the National
Guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed
by the division and receipt of written evidence from the
chief executive officer of the Army National Guard or Air
National Guard, as appropriate, or the commanding officer
of any United States armed forces reserve unit that the
applicant is a member thereof, the division shall issue to any
member of the National Guard of this state or a member of
any reserve unit of the United States armed forces a special
registration plate designed by the commissioner for any
number of Class A motor vehicles owned by the member.
Upon presentation of written evidence of retirement status,
retired members of this state’s Army or Air National Guard,
or retired members of any reserve unit of the United States
armed forces, are eligible to purchase the special
registration plate issued pursuant to this subdivision.
(B) The division shall charge an initial application fee of $10 for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. Except as otherwise provided herein, effective July 1, 2007, all fees currently held in the special revolving fund used in the administration of this section and all fees collected by the division shall be deposited in the State Road Fund.

(C) A surviving spouse may continue to use his or her deceased spouse’s National Guard forces license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-1-1 et seq. of this code regarding the orderly distribution of the plates: Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through 2,000.

(C) An annual fee of $15 shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) The division may issue honorably discharged veterans special registration plates as follows:
(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration. All fees collected by the division shall be deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters “DV” in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse’s disabled veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veterans license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee
The division may issue recipients of the distinguished Purple Heart medal special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished Purple Heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the Purple Heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s Purple Heart medal license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(D) A recipient of the Purple Heart medal may obtain a second Purple Heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed
services that participated in and survived the attack on Pearl Harbor on December 7, 1941, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remARRies, or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations authorized under prior enactment of this subdivision as follows:

(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of $15, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the Division of Motor Vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organization’s logo or emblem,
with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in the State Road Fund. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the State Fire Commission, the State Fire Marshal, the State Fire Marshal’s assistants, the State Fire Administrator, and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group, or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that
the applicant is justified in having a registration with the
requested insignia; proof of compliance with all laws of this
state regarding registration and licensure of motor vehicles;
and payment of all required fees.

(C) Each application submitted pursuant to this
subdivision shall be accompanied by payment of a special
initial application fee of $10, which is in addition to any
other registration or license fee required by this chapter. All
special fees shall be collected by the division and deposited
into the State Road Fund.

(11) The division may issue specified certified
firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of
the State of West Virginia and who is a certified firefighter
may apply for a special license plate which bears the
insignia of the profession, for any number of Class A
vehicles titled in the name of the qualified applicant. Any
insignia shall be designed by the commissioner. License
plates issued pursuant to this subdivision shall bear the
requested insignia pursuant to the provisions of this article.
Upon presentation of written evidence of certification as a
certified firefighter, certified firefighters are eligible to
purchase the special registration plate issued pursuant to this
subdivision.

(B) Each application submitted pursuant to this
subdivision shall be accompanied by an affidavit stating that
the applicant is justified in having a registration with the
requested insignia; proof of compliance with all laws of this
state regarding registration and licensure of motor vehicles;
and payment of all required fees. The firefighter
certification department, section, or division of the West
Virginia University fire service extension shall notify the
commissioner in writing immediately when a firefighter
loses his or her certification. If a firefighter loses his or her
certification, the commissioner may not issue him or her a
license plate under this subdivision.
(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(12) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words “Wild Wonderful” as a slogan.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund.

(13) The division may issue honorably discharged Marine Corps League members special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged Marine Corps League member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division may charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.
(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged Marine Corps League license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of $10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s military organization registration plate until the surviving spouse dies, remarries, or does not renew the special military organization registration plate.

(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife which shall display a species of
wildlife native to West Virginia as prescribed and
designated by the commissioner and the Director of the
Division of Natural Resources.

(B) The division shall charge an annual fee of $15 for
each special nongame wildlife registration plate and each
special wildlife registration plate in addition to all other fees
required by this chapter. All annual fees collected for
nongame wildlife registration plates and wildlife
registration plates shall be deposited in a special revenue
account designated the Nongame Wildlife Fund and
credited to the Division of Natural Resources.

(C) The division shall charge a special one-time initial
application fee of $10 in addition to all other fees required
by this chapter. All initial application fees collected by the
division shall be deposited in the State Road Fund.

(16) The division may issue members of the Silver
Haired Legislature special registration plates as follows:

(A) Upon appropriate application, the division shall
issue to any person who is a duly qualified member of the
Silver Haired Legislature a specialized registration plate
which bears recognition of the applicant as a member of the
Silver Haired Legislature.

(B) A qualified member of the Silver Haired Legislature
may obtain one registration plate described in this
subdivision for use on a passenger vehicle titled in the name
of the qualified applicant. The division shall charge an
annual fee of $15, in addition to all other fees required by
this chapter, for the plate. All annual fees collected by the
division shall be deposited in the State Road Fund.

(17) Upon appropriate application, the commissioner
shall issue to a classic motor vehicle or classic motorcycle,
as defined in §17A-10-3a of this code, a special registration
plate designed by the commissioner. An annual fee of $15,
in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of motorcycles subject to Class G registration titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee is to be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(B) An annual fee of $25 shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for
any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(20) The division may issue recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the Commissioner of the Division of Motor Vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal as applicable.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal special registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:
(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War, or the War Against Terrorism a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner denoting service in the applicable conflict.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans’ registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(22) The division may issue special volunteer firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman’s helmet insignia on the left side of the license plate.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the applicant’s fire chief, stating that the applicant is a volunteer firefighter and justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding
registration and licensure of motor vehicles and must pay all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into the State Road Fund.

(23) The division may issue special registration plates which reflect patriotic themes, including the display of any United States symbol, icon, phrase, or expression which evokes patriotic pride or recognition. The division shall also issue registration plates with the words “In God We Trust”:

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant’s choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the Commissioner of the Division of Motor Vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of the license plates designated by this subdivision.

(24) Special license plates bearing the American flag and the logo “9/11/01”:

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo “9/11/01”.
(B) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development movement and honoring the Future Farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands, and health as well as the symbol of the Future Farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special 4-H Future Farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state’s elementary and secondary schools and in the state’s institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.
(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special educator registration plate in addition to all other fees required by this chapter.

(27) The division may issue special registration plates to members of the Nemesis Shrine as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Nemesis Shrine.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Nemesis Shrine to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(28) The division may issue volunteers and employees of the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified volunteer or employee of the American Red Cross a specialized registration plate which bears recognition of the applicant as a volunteer or employee of the American Red Cross for
any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(29) The division shall issue special registration plates to individuals who have received either the Combat Infantry Badge or the Combat Medic Badge as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received either the Combat Infantry Badge or the Combat Medic Badge.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This
special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Knights of Columbus to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2007.

(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. The design of the plate shall indicate total years of service in the Legislature.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(32) Democratic state or county executive committee member special registration plates:

(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.
(B) An annual fee of $25 shall be charged for each democratic state or county executive committee member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision shall be deposited into the State Road Fund.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(D) The division shall not begin production of a plate authorized under the provisions of this subdivision until the division receives at least 100 completed applications from the state or county executive committee members, including all fees required pursuant to this subdivision.

(E) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the democratic executive committee to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(33) The division may issue honorably discharged female veterans’ special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any female honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a woman veteran.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this
section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of $15, which is in addition to any other registration or license fee required by this chapter. The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(35) The division may issue special registration plates to members of the Harley Owners Group as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Harley Owners Group.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.
(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for persons retired from any branch of the armed services of the United States as follows:

(A) Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as retired from the armed services of the United States.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s retired military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(37) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with or support for Fairmont State College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This
special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(38) The division may issue special registration plates honoring the farmers of West Virginia, and the division may issue special beekeeper pollinator registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner. Upon appropriate application, the division shall issue a special registration plate displaying a pollinator species or advocating its protection as prescribed and designated by the commissioner.

(B) The division shall charge a special initial application fee of $10 for each plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates promoting education as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children’s education-related theme as prescribed and designated by the commissioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.
(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne Division Association special registration plates as follows:

(A) The division may issue a special registration plate for members of the 82nd Airborne Division Association upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the 82nd Airborne Division Association in good standing, as determined by the governing body of the organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of $10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: Provided, That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s special 82nd Airborne Division Association registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(41) The division may issue special registration plates supporting law-enforcement officers, and the division may issue special registration plates to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the
commissioner which recognizes, supports, and honors the men and women of law-enforcement and includes the words “Back the Blue”. Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the State Police, or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs’ Association, the West Virginia Troopers Association, or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(B) For special registration plates supporting law-enforcement officers, the division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. An annual fee of $15 shall be charged for each plate supporting law-enforcement officers in addition to all other fees required by this chapter.

(C) Registration plates issued pursuant to this subdivision to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency are exempt from the registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use his or her deceased spouse’s special registration plate until the surviving spouse dies, remarries, or does not renew the plate. Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.
The division may issue a special registration plate for persons who are Native-Americans and residents of this state:

(A) Upon appropriate application, the division shall issue to an applicant who is a Native-American resident of West Virginia a registration plate for a vehicle titled in the name of the applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a Native-American.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

The division may issue special registration plates commemorating the centennial anniversary of the creation of Davis and Elkins College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to commemorate the centennial anniversary of Davis and Elkins College for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

The division may issue special registration plates recognizing and honoring breast cancer survivors. The division may also issue special registration plates to support a cure for childhood cancer:
(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and honor breast cancer survivors, such plate to incorporate somewhere in the design the “pink ribbon emblem”, for any number of vehicles titled in the name of the applicant. Upon appropriate application, the division may also issue a special registration plate designed by the commissioner to support a cure for childhood cancer, such plate to incorporate somewhere in the design the gold ribbon emblem with “WV Kids Cancer Crusaders” below or next to the emblem and “Cure Childhood Cancer” at the bottom of the plate, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(45) The division may issue special registration plates to members of the Knights of Pythias or Pythian Sisters as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Pythias or Pythian Sisters.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.
The commissioner may issue special registration plates for whitewater rafting enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

The division may issue special registration plates to members of Lions International as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with Lions International for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Lions International.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

The division may issue special registration plates supporting organ donation as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the
commissioner which recognizes, supports, and honors organ and tissue donors and includes the words “Donate Life”.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(49) The division may issue special registration plates to members of the West Virginia Bar Association as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the West Virginia Bar Association for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the West Virginia Bar Association.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(50) The division may issue special registration plates bearing an appropriate logo, symbol, or insignia combined with the words “SHARE THE ROAD” designed to promote bicycling in the state as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the applicant.
(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(51) The division may issue special registration plates honoring coal miners and the coal industry as follows:

(A) Upon appropriate application, the division shall issue a special registration plate depicting and displaying coal miners in mining activities as prescribed and designated by the commissioner and the board of the National Coal Heritage Area Authority. The division may also issue registration plates with the words “Friends of Coal”.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of license plates designated by this subdivision.

(52) The division may issue special registration plates to present and former Boy Scouts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of present or past membership in the Boy Scouts as either a member or a leader.
(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(53) The division may issue special registration plates to present and former Boy Scouts who have achieved Eagle Scout status as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of achievement of Eagle Scout status.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(54) The division may issue special registration plates recognizing and memorializing victims of domestic violence:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and memorialize victims of domestic violence, such plate to incorporate somewhere in the design the “purple ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10. This special fee shall be deposited in the State Road Fund.
(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(55) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with or support for the University of Charleston as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.
(57) The commissioner may issue special registration plates for horse enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

(58) The commissioner may issue special registration plates to the next of kin of a member of any branch of the armed services of the United States killed in combat as follows:

(A) Upon appropriate application, the division shall issue a special registration plate for any number of vehicles titled in the name of a qualified applicant depicting the Gold Star awarded by the United States Department of Defense as prescribed and designated by the commissioner.

(B) The next of kin shall provide sufficient proof of receiving a Gold Star lapel button from the United States Department of Defense in accordance with Public Law 534, 89th Congress, and criteria established by the United States Department of Defense, including criteria to determine next of kin.

(C) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.
(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of special license plates designated by this subdivision.

(59) The commissioner may issue special registration plates for retired or former justices of the Supreme Court of Appeals of West Virginia as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of special license plates designated by this subdivision.

(60) Upon approval by the commissioner of an appropriate application, and upon all requirements of this subdivision being satisfied, the division may issue special registration plates for Class A and Class G motor vehicles to members of an organization for which a special registration plate has not been issued pursuant to any other subdivision in this subsection prior to January 1, 2010, in accordance with the provisions of this subdivision:

(A) An organization desiring to create a special registration plate must comply with the following requirements to be eligible to apply for the creation and issuance of a special registration plate:
The organization must be a nonprofit organization organized and existing under Section 501(c)(3) of Title 26 of the Internal Revenue Code and based, headquartered, or have a chapter in West Virginia;

(ii) The organization may be organized for, but may not be restricted to, social, civic, higher education, or entertainment purposes;

(iii) The organization may not be a political party and may not have been created or exist primarily to promote a specific political or social belief, as determined by the commissioner in his or her sole discretion;

(iv) The organization may not have as its primary purpose the promotion of any specific faith, religion, religious belief, or antireligion;

(v) The name of the organization may not be the name of a special product or brand name, and may not be construed, as determined by the commissioner, as promoting a product or brand name; and

(vi) The organization’s lettering, logo, image, or message to be placed on the registration plate, if created, may not be obscene, offensive, or objectionable as determined by the commissioner in his or her sole discretion.

(B) Beginning July 1, 2010, an organization requesting the creation and issuance of a special registration plate may make application with the division. The application shall include sufficient information, as determined by the commissioner, to determine whether the special registration plate requested and the organization making the application meet all of the requirements set forth in this subdivision. The application shall also include a proposed design, including lettering, logo, image, or message to be placed on the registration plate. The commissioner shall notify the
organization of the commissioner’s approval or disapproval of the application.

(C)(i) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this subdivision until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 250 persons and collectively deposited with the division all fees necessary to cover the first year’s basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee for all of the applications submitted.

(ii) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate will not be produced until a new application is submitted and is approved by the commissioner: Provided, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(D) The division shall charge a special initial application fee of $25 for each special license plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(E) The division shall charge an annual fee of $15 for each special registration plate in addition to all other fees required by this chapter.

(F) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate
shall offer sufficient proof of membership in the organization.

(G) The commissioner shall discontinue the issuance or renewal of the registration of any special plate issued pursuant to this subdivision if:

(i) The number of valid registrations for the specialty plate falls below 250 plates for at least 12 consecutive months; or

(ii) The organization no longer exists or no longer meets the requirements of this subdivision.

(d) The minimum number of applications required prior to design and production of a special license plate shall be as follows:

(1) The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least 100 persons complete an application and deposit with the organization a check to cover the first year’s basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: Provided, That an organization or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization: Provided, however, That the provisions of this subdivision are not applicable to the issuance of plates authorized pursuant to §17A-3-14(c)(60) of this code.

(2) The commissioner may not begin the design or production of any license plates authorized by this section for
which membership or affiliation with a particular organization is not required until at least 250 registrants complete an application and deposit a fee with the division to cover the first year’s basic registration fee, one-time design and manufacturing fee, and additional annual fee if applicable. If the commissioner fails to receive the required number of applications within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: Provided, That if the minimum number of applications is not satisfied within the six months of the effective date of the original authorizing legislation, a person may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization.

(e)(1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse’s prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special 10-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than 10 years any registration plate exempted
from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by §17A-10-3a of this code: Provided, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by §17A-3-3, §17A-10-3a, or §17A-10-15 of this code for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by §17D-2A-3 of this code or from paying personal property taxes on any motor vehicle as required by §17A-3-3a of this code.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers, and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner. The commissioner shall, whenever possible and cost effective, implement the latest technology in the design, production, and issuance of registration plates, indices of registration renewal and vehicle ownership documents, including, but not limited to, offering Internet renewal of vehicle registration and the use of bar codes for instant identification of vehicles by scanning equipment to promote the efficient and effective coordination and communication of data for improving highway safety, aiding law enforcement, and enhancing revenue collection.
(i) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order, or certified check and all applicable fees assessed as a result thereof have been paid.

(j) The division shall, upon request of a qualifying applicant, exempt one nonexempt military special registration plate per qualifying applicant from all registration fees. For purposes of this subsection:

(1) “Exempt military special registration plate” means a special registration plate related to military service that is issued pursuant to this section for which registration fees are exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, a special registration plate issued to one of the following:

(A) A disabled veteran pursuant to §17A-3-14(c)(6), §17A-10-8(4), or §17A-10-8(5) of this code;

(B) A recipient of the Purple Heart medal pursuant to §17A-3-14(c)(7) of this code;

(C) A survivor of the attack on Pearl Harbor pursuant to §17A-3-14(c)(8) of this code;

(D) A former prisoner of war pursuant to §17A-10-8(6) of this code; or

(E) A recipient of the Congressional Medal of Honor pursuant to §17A-10-8(7) of this code.

(2) “Nonexempt military special registration plate” means a special registration plate related to military service that is issued pursuant to this section for which registration fees are not exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, special registration plate issued to one of the following:
(A) A member of the National Guard forces pursuant to §17A-3-14(c)(3) of this code;

(B) An honorably discharged veteran pursuant to §17A-3-14(c)(5) or §17A-3-14(c)(21) of this code;

(C) An honorably discharged Marine Corps League member pursuant to §17A-3-14(c)(13) of this code;

(D) A member of a military organization pursuant to §17A-3-14(c)(14) of this code;

(E) A recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal pursuant to §17A-3-14(c)(20) of this code;

(F) A recipient of the Combat Infantry Badge or the Combat Medic Badge pursuant to §17A-3-14(c)(29) of this code;

(G) An honorably discharged female veteran pursuant to §17A-3-14(c)(33) of this code;

(H) A person retired from any branch of the armed services of the United States pursuant to §17A-3-14(c)(36) of this code; or

(I) A member of the 82nd Airborne Division Association pursuant to §17A-3-14(c)(40) of this code.

(3) “Qualifying applicant” means an applicant who qualifies for an exempt military special registration plate, and who also qualifies for a nonexempt military special registration plate, who requests that the division issue one such nonexempt military special registration plate instead of such exempt military special registration plate in order to have such nonexempt military special registration plate be exempt from the payment of registration fees.
AN ACT to amend and reenact §17E-1-9 of the Code of West Virginia, 1931, as amended, relating to qualifications for commercial driver’s license; and providing that a commercial license instruction permit may be issued to persons 18 years of age who have held a graduated Class E, Class E or Class D license for at least one year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-9. Commercial driver’s license qualification standards.

(a) No person may be issued a commercial driver’s license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. Part §383, Subparts G and H (2004) and has satisfied all other requirements of the Federal Motor Carrier Safety Improvement Act of 1999 in addition to other requirements imposed by state law or federal regulations.

(b) Third-party testing. — The commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency or instrumentality of local government,
to administer the skills test specified by this section so long as:

(1) The test is the same which would otherwise be administered by the state; and

(2) The party has entered into an agreement with the state that complies with the requirements of 49 C.F.R., Part §383.75.

(c) Indemnification of driver examiners. — No person who has been officially trained and certified by the state as a driver examiner, who administers a driving test, and no other person, firm or corporation by whom or with which that person is employed or is in any way associated, may be criminally liable for the administration of the tests or civilly liable in damages to the person tested or other persons or property unless for gross negligence or willful or wanton injury.

(d) The commissioner may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. Part §383.77 and the requirements specified by the commissioner.

(e) A commercial driver’s license or commercial driver’s instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, when the person does not possess a valid or current medical certification status or while the person’s driver’s license is suspended, revoked or canceled in any state. A commercial driver’s license may not be issued by any other state unless the person first surrenders all such licenses to the division: Provided, That a person who became subject to a disqualification from driving a commercial motor vehicle prior to possessing a commercial driver’s license is not disqualified from possessing a commercial driver’s license or commercial
driver’s license instruction permit so long as the mandatory revocation period specified in subdivision (3), subsection (a), section thirteen of this article has elapsed, and the individual has completed the Safety and Treatment Program or other appropriate program prescribed by the division as required by subdivision (2) of said subsection.

(f) Commercial driver’s instruction permit may be issued as follows:

(1) To an individual who holds a valid Class E or Class D driver’s license and has passed the vision and written tests required for issuance of a commercial driver’s license.

(2) The commercial instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver’s instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver’s license valid for the type of vehicle driven, who is 21 years of age or older, who is alert and unimpaired and who occupies a seat beside the individual for the purpose of giving instruction or testing.

(3) Only to a person who is at least 18 years of age and has held a graduated Class E, Class E or Class D license for at least one year.

(4) The applicant for a commercial driver’s instruction permit shall also be otherwise qualified to hold a commercial driver’s license.
CHAPTER 176

(Com. Sub. for S. B. 317 - By Senators Maynard, Cline and Sypolt)

[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 §20-17-1, §20-17-2, §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-17-8, and §20-17-9; and to amend said code by adding thereto a new article, designated §20-17A-1, §20-17A-2, §20-17A-3, §20-17A-4, and §20-17A-5, all relating generally to forming multicounty trail network authorities; creating a framework for establishment of multicounty trail network authorities and authorizing the formation of the Mountaineer Trail Network Recreation Authority; providing legislative findings; defining terms; providing that an authority is a public corporation and joint development entity; providing procedures for counties to join a trail network authority as a participating county and providing for the merger of two established authorities; providing for appointment of individuals to the board of an authority and for the filling of vacancies on the board; establishing the terms of appointment to a board; requiring quarterly meetings of a board; describing how a quorum is established; authorizing a board to promulgate bylaws and rules; providing that an authority is subject to Freedom of Information Act laws; describing the powers and duties of an authority and its board; requiring a board to appoint an executive director; describing powers and duties of an executive director; authorizing employment of authority staff; requiring creation of an annual budget; providing for payment of an authority’s expenses; allowing reimbursement of board member expenses; establishing
financial audit requirements; requiring reporting and oversight of state funds; prohibiting certain actions by users of recreational area land and providing criminal penalties; limiting the liability of owners of land used by an authority; setting forth purchasing and bidding procedures for authority contracts and purchases; providing criminal penalties for violation of purchasing and bidding requirements; clarifying that certain provisions of the code prohibiting certain officers from having a pecuniary interest in contracts applies to board members, officers, personnel, and agents of an authority; providing civil remedies for participating counties challenging purchasing contracts violating certain requirements; establishing the Mountaineer Trail Network Recreation Authority and authorizing the creation of the Mountaineer Trail Network Recreation Area; identifying participating counties; authorizing counties to join the Mountaineer Trail Network Recreation Authority through certain procedures; authorizing the Mountaineer Trail Network Recreation Authority to merge with other multicounty trail network authorities through certain procedures; providing legislative findings and purposes for this authority; listing the recreational purposes for the recreation area; specifying manner of governance and payment of expenses; and ensuring liability protections for cooperating land owners.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. MULTICOUNTY TRAIL NETWORK AUTHORITIES.

§20-17-1. Legislative findings.

1 The West Virginia Legislature finds that outdoor recreation is an increasingly vital part of the state’s economy and that outdoor recreation participants spend billions of dollars annually in the state and support a significant number of local jobs.
The Legislature further finds that well-managed areas for trail-oriented recreation in the state will increase outdoor recreational tourism, increasing revenue to the state and creating more jobs for West Virginia citizens.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide citizens and recreational tourists with greater access to trail-oriented recreation by incorporating private property into recreational trail systems and areas throughout West Virginia to provide significant economic and recreational benefits to communities in the state.

The Legislature further finds that, under an appropriate contractual and management scheme, well-managed trail systems may exist on private property without diminishing the landowner’s interest, control, or profitability in the land and without increasing the landowner’s exposure to liability.

The Legislature further finds that creating and empowering multicounty trail network authorities, that can work with the landowners, county officials, community leaders, state and federal government agencies, recreational user groups, and other interested parties to expand trail systems will greatly assist in improving and linking recreational trail systems.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make land available for public use, through multicounty trail network authorities, for recreational purposes by limiting landowner liability for injury to persons entering thereon, by limiting landowner liability for injury to the property of persons entering thereon, and by limiting landowner liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.
§20-17-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this article have the following meanings:

1. “Adjacent county” means a nonparticipating county that directly borders any participating county in a multicounty trail network authority;

2. “Authority” means a multicounty trail network authority created pursuant to this article;

3. “Board” means the board of a multicounty trail network authority;

4. “Contiguous counties” means a group of counties in which each county shares the border of at least one other county in the group;

5. “Fee” means the amount of money asked in return for an invitation to enter or go upon a recreational area of a trail network, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by an authority, which may differ in amount for different categories of participants;

6. “Land” or “property” includes, but is not limited to, roads, water, watercourses, private ways, buildings, premises, structures, and machinery or equipment, when attached to the realty;

7. “Owner” or “owner of land” means a person vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, a tenant, lessee, licensee, holder of a dominant estate, or other lawful occupant;

8. “Participant” means any person using a recreational area of a trail network for recreational purposes;
(9) “Person” means any public or private corporation, institution, association, society, firm, organization, or company organized or existing under the laws of this or any other state or country; the State of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust, or estate; a person or individual; a group of persons or individuals acting individually or as a group; any other legal entity; or any authorized agent, lessee, receiver, or trustee of any of the foregoing;

(10) “Participating county” means one of the three or more counties forming a multicounty trail network authority;

(11) “Recreational area” means the recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities or attractions that are a part of a multicounty trail network authority system; and

(12) “Recreational purposes” means:

(A) Any outdoor activity undertaken, or practice or instruction in any such activity, for the purpose of exercise, relaxation, or pleasure, including, but not limited to any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, kayaking, camping, picnicking, hiking, rock climbing, bouldering, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites, aircraft, or ultralight operations on private airstrips or farms, or otherwise using land for purposes of the user;
(B) Parking on or traversing land, outside of the state road system, for the purpose of engaging in a recreational activity described in paragraph (A) of this subdivision; or

(C) Maintaining or making improvements on land, including, but not limited to, artificial improvements for the purpose of making the land accessible or usable for a recreational activity described in paragraph (A) of this subdivision.

§20-17-3. Multicounty trail network authorities authorized; addition of counties; merger of existing authorities.

(a) For the purposes of this article, three or more contiguous counties may, upon approval of the county commission of each county desiring to participate, form a multicounty trail network authority. An authority established pursuant to this section is a public corporation and a joint development entity existing for the purpose of facilitating the development and operation of a system of recreational trails and areas throughout the participating counties. Such trails will be designated and made available for recreational purposes with significant portions of the trails system being located on private property throughout West Virginia, made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) An adjacent county may join a multicounty trail network authority as a participating county upon approval of both the board of the authority and the county commission of the adjacent county wishing to become a participating county.

(c) Two or more existing authorities may merge and become a single authority encompassing the participating counties in each merging authority upon approval of the board of each authority. Upon merger of two or more authorities, the board of the newly created authority will be composed of all board members serving on the board of
Thereafter, the authority will fill any vacancies and appoint board members as required by §20-17-4 of this code. The board of the newly created authority shall adopt appropriate procedures and bylaws to ensure that the newly created authority complies with all requirements of this article.

§20-17-4. Board; quorum; executive director; expenses; application of state Freedom of Information Act.

(a) The board is the governing body of an authority and the board shall exercise all the powers given the authority in this article. The county commission of each participating county shall appoint two members to the board, as follows:

(1) Each participating county shall appoint one member who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the authority’s recreational area. This member shall be appointed to a four-year term.

(2) Each participating county shall appoint one member who is an experienced instructor, guide, or participant in recreational activities in the county or an individual who represents and is associated with travel, tourism, economic development, land surveying, or relevant engineering efforts within the county. The initial appointment for this member shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(3) Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.
(b) Upon joining an existing authority as a participating county pursuant to §20-17-3 of this code, the newly participating county shall appoint board members only for the length of the unexpired terms of the authority’s board members serving at the time the county joins the authority. Thereafter, the county shall appoint board members according to the regular appointment procedure provided in subsection (a) of this section.

(c) The board shall meet quarterly, unless a special meeting is called by its chairman. During the first meeting of each fiscal year beginning in an odd-numbered year, or as soon as feasible thereafter, the board shall elect a chairman, secretary, and treasurer from among its own members to serve for two-year terms.

(d) A majority of the members of the board constitutes a quorum and a quorum shall be present for the board to conduct business.

(e) The board may prescribe, amend, and repeal bylaws and rules governing the use of the trail system, safety standards for participants, and the manner in which the business of the authority is conducted.

(f) The board shall review and approve an annual budget. The fiscal year for an authority begins on July 1 and ends on the 30th day of the following June.

(g) The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and retain such temporary legal, engineering, financial, and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare an annual budget to be
submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits, and total compensation. Before August 15 of each year, the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue, by account and recipient name, for the previous fiscal year and a copy of the approved budget for the current fiscal year.

(h) All costs incidental to the administration of the authority, including office expenses, personal services expenses, and current expenses, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(i) All expenses incurred by an authority in carrying out the provisions of this article shall be payable solely from funds that have accrued to the authority pursuant to this article. An authority may not incur liability or an obligation above the amount of funds that have accrued to the authority pursuant to this article.

(j) A multicounty trail network authority and the board is a “public body” for purposes of the West Virginia Freedom of Information Act, as provided in §29B-1-1 et seq. of this code.

§20-17-5. Financial review and oversight.

(a) An authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county, and the Legislative Auditor. The cost of the audit shall be paid by the authority.
(b) If an authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures, and performance of the authority, and, for these purposes, shall have the power to inspect the properties, equipment, and facilities of the authority and to request, inspect, and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year within 45 days of the close of that fiscal year.

§20-17-6. Powers of an authority.

An authority, as a public corporation and joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

1. To acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

2. To lease property, whether as lessee or lessor, and to acquire or grant through easement, license, or other appropriate legal form, the right to develop and use property and open it to the public;

3. To mortgage or otherwise grant security interests in its property;

4. To procure insurance against any losses in connection with its property, licenses, easements, operations, assets, or contracts, including hold-harmless agreements, in such amounts and from such insurers as the authority considers desirable;
(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded, and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 et seq. of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority;

(8) To adopt, use, and alter at will a corporate seal;

(9) To make, amend, repeal, and adopt bylaws for the management and regulation of the authority’s affairs;

(10) To appoint officers, agents, and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying out the purposes of this article, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from, and enter into contracts and other transactions with, any federal agency;

(13) To maintain an office at such place or places within the state as it may designate;
(14) To borrow money, to issue notes, to provide for the payment of notes, to provide for the rights of the holders of notes, and to purchase, hold, and dispose of any of its notes;

(15) To issue notes payable solely from the revenue or other funds available to the authority, which may be issued in such principal amounts as necessary to provide funds for any purpose under this article, including:

(A) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on notes issued by it, whether the notes or interest to be funded or refunded have or have not become due; and

(B) The establishment or increase of reserves to secure or to pay notes, or the interest on the notes, and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source;

(16) To issue renewal notes, except that no renewal notes may be issued to mature more than 10 years from the date of issuance of the notes renewed;

(17) To apply the proceeds from the sale of renewal notes to the purchase, redemption, or payment of the notes to be refunded;

(18) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the federal government or from any governmental unit or any person, firm, or corporation, and to take appropriate measures in procuring, accepting, or disposing of gifts or grants;

(19) To the extent permitted under its contracts with the holders of notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other
term of any note, contract or agreement of any kind to which the authority is a party;

(20) To construct, reconstruct, improve, maintain, repair, operate, and manage the recreational areas at the locations within the participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the authority’s recreational area and to reimburse the Division of Natural Resources for its costs therefor;

(22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain, and operate or oversee the operation of the authority at such locations within the participating counties as may be determined by the authority;

(23) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(24) To develop, maintain, and operate or contract for the development, maintenance, and operation of the authority;

(25) To enter into contracts with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or any of his or her agents or employees;

(26) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers, or other facilities which are part of the recreational area and
to retain and utilize that revenue for any purposes consistent with this article: Provided, That such fee does not constitute a “charge” or a “fee” within the meaning and for the purposes of §19-25-5 of this code: Provided, however, That the authority may not charge a fee for any user to enter or go upon any trail that is already open for use by the public without fee as of January 1, 2019;

(27) To enter into contracts or other appropriate legal arrangements with landowners under which land is made available for use as part of the recreational area;

(28) To directly operate and manage recreation activities and facilities within the recreational area;

(29) To promulgate and publish rules governing the use of the recreational area and the safety of participants, including rules designating particular trails or segments of trails within the recreational area for certain activities and limiting use of designated trails to such activities;

(30) To coordinate and conduct athletic races, competitions, or events within the recreational area, in cooperation with the county commissions of participating counties in which such events will take place; and

(31) To exercise such other and additional powers as may be necessary or appropriate to carry out the purposes of this article.

§20-17-7. Requirements for trail users and prohibited acts; criminal penalties.

(a) A person may not enter or remain upon a recreational area without a valid, nontransferable user permit issued by the appropriate authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land.
(b) An authority may require recreational users to wear protective helmets or use safety equipment that the authority determines to be appropriate for the recreational activity in which the user is engaged.

c) Each trail user operating a bicycle or mountain bicycle shall obey all traffic laws, traffic-control devices, and signs within the recreational area, including those which restrict trails to certain types of bicycles or mountain bicycles.

d) Each trail user shall at all times remain within and on a designated and marked trail while within the recreational area.

e) A person may not ignite or maintain any fire within the recreational area except in a designated camp site.

(f) A person may not operate a motor vehicle within the recreational area unless the person is authorized to operate a motor vehicle in the area to perform maintenance services or emergency response.

(g) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $100. Prosecution or conviction for the misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

§20-17-8. Limiting liability.

(a) An owner of land used by an authority owes no duty of care to keep his or her land safe for entry or use by others for recreational purposes, or to give any warning of a dangerous or hazardous condition, use, structure, activity, or wild animal on such land to persons entering or going upon the land for such purposes. The provisions of this section apply regardless of whether the person entering or going upon the leased land is permitted to enter the land or is a trespasser.
(b) Unless otherwise agreed in writing, an owner of land who grants a lease, easement, or license of land to an authority for recreational purposes does not, by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the land is safe for any purpose; (2) confer upon those persons the legal status of a party to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property or death caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering or going upon the leased land is permitted to enter the land or is a trespasser.

(c) Nothing in this section limits in any way any liability which otherwise exists for deliberate, willful, or malicious infliction of injury to persons or property: Provided, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself.

§20-17-9. Purchasing and bidding procedures; criminal penalties.

(a) Purchasing and bidding procedures; criminal penalties. —

(1) Whenever an authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed $25,000 in cost, the purchase or contract shall be based on competitive bidding. Where the purchase of particular commodities or services is reasonably anticipated to be less than $25,000, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority
(2) Where the cost for the purchase of commodities or services is reasonably anticipated to exceed $25,000, the executive director shall solicit sealed bids for such commodities or services: Provided, That the executive director may permit bids by electronic transmission to be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of §59-3-1 et seq. of this code and by such other means as the executive director deems appropriate. The 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 for receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority’s budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(3) For any contract that exceeds $25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least 50 percent of the contract price conditioned upon faithful performance and completion of the contract.

(4) The bidding requirements specified in this section do not apply to any leases for real property upon which the
authority makes improvements for public access to the recreational area, information distribution, and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage, or administrative facilities.

(5) Any person who violates a provision of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than 10 days nor more than one year, or fined not less than $10 nor more than $1,000, or both fined and confined.

(b) Conflicts of interest in contracts prohibited. —

An authority or any of its board members, officers, employees, or agents may not enter into any contracts, agreements, or arrangements for purchases of services or commodities violating the requirements of §6B-2-5 or §61-10-15 of this code.

(c) Civil remedies. —

The county commission of a participating county in an authority may challenge the validity of any contract or purchase entered, solicited, or proposed by the authority in violation of this section by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of those sections have been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.

ARTICLE 17A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-17A-1. Legislative findings; purpose.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide
trail-oriented recreation facilities primarily on private property in the mountainous terrain of the Potomac Highlands and north central West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in the Potomac Highlands and north central West Virginia through increased tourism in the same manner as whitewater rafting, snow skiing, and utility terrain motor vehicle riding benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups, and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The purpose of this article is to provide additional opportunities and regulatory authorization for recreational trail networks and to provide for increased access to recreational areas, including, but not limited to, creating a contiguous trail system that connects to the Chesapeake and Ohio Canal Tow Path.

§20-17A-2. Creation of Mountaineer Trail Network Recreation Authority and establishment of recreation area.

(a) There is hereby created the Mountaineer Trail Network Recreation Authority consisting of representatives from the counties of Barbour, Grant, Harrison, Marion, Mineral, Monongalia, Preston, Randolph, Taylor, and Tucker organized pursuant to the provisions of §20-17-1 et seq. of this code. This authority is authorized to establish a Mountaineer Trail Network Recreation Area within the jurisdictions of those counties and the authority shall be subject to the powers, duties, immunities, and restrictions provided in §20-17-1 et seq. of this code. Visitors and participants in recreational activities within the trail network
shall, in similar respects, be subject to the user requirements and prohibitions of §20-17-7 of this code.

(b) Notwithstanding subsection (a) of this section, an adjacent county may join the Mountaineer Trail Network Recreation Authority pursuant to the procedures set forth in §20-17-3(b) of this code.

(c) Notwithstanding subsection (a) of this section, the Mountaineer Trail Network Recreation Authority may merge with another multicounty trail network authority, pursuant to the procedures set forth in §20-17-3(c) of this code.


The permitted recreational purposes for the Mountaineer Trail Network Recreation Area include, but are not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, bicycling, mountain bicycling, running, cross-country running, nature study, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites.

§20-17A-4. Governing body and expenses.

(a) The governing body of the authority shall be a board constituted according to the provisions of §20-17-4 of this code.

(b) All costs incidental to the administration of the authority, including office expenses, personal services expenses and current expenses, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(c) All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and according to the
requirements of §20-17-1 et seq. of this code. No liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-17A-5. Protection for private landowners.

Owners of land used by the authority shall have the full benefit of the limitations of liability provided in §20-17-8 of this code.

CHAPTER 177

(Com. Sub. for H. B. 2521 - By Delegates Harshbarger, Paynter, Cooper, Bibby, D. Kelly, Atkinson, Sypolt, Hanna, Mandt and Porterfield)

[Passed February 15, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2019.]

AN ACT to amend and reenact §20-2-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §20-2-12 of said code; and to amend and reenact §20-2-49 of said code, all relating to permitting the selling, trading, and bartering of fur-bearer parts, including carcasses for the making of lures and baits, carcass parts, including glands, skulls, claws, and bones, and fur-bearer urine; and providing that the hide and tails of legally killed squirrels may be sold, traded or bartered.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.

(a) A person, except those legally licensed to operate private game preserves for the purpose of propagating game
for commercial purposes and those legally licensed to
propagate or sell fish, amphibians and other forms of
aquatic life, may not purchase or offer to purchase, sell or
offer to sell, trade or offer to trade, barter or offer to barter,
expose for sale, trade or barter or have in his or her
possession for the purpose of sale, trade or barter any
wildlife, or part thereof, which has been designated as game
animals, fur-bearing animals, game birds, game fish or
amphibians, or any of the song or insectivorous birds of the
state, or any other species of wildlife which the director may
designate, except for captive cervids regulated pursuant to
the provisions of §19-2H-1 et seq. of this code. However,
pelts of game or fur-bearing animals, fur-bearer parts,
including carcasses for the making of lures and baits,
carcase parts, including glands, skulls, claws, and bones,
and fur-bearer urine taken during the legal season may be
sold, traded or bartered and live red and gray foxes and
raccoon taken by legal methods during legal and established
trapping seasons may be sold, traded or bartered within the
state. In addition, the hide, head, antlers and feet of a legally
killed deer, lawfully collected and possessed naturally shed
deer antlers, the hide, head and skull of a legally killed black
bear, and the hide and tails of legally killed squirrels may be
sold, traded or bartered.

(b) A person, including a common carrier, may not
transport, carry or convey, or receive for such purposes, any
wildlife, the sale, trade or bartering of which is prohibited,
if such person knows or has reason to believe that such
wildlife has been or is to be sold, traded or bartered in
violation of this section.

(c) Each separate act of selling or exposing for sale,
trading or exposing for trade or bartering or exposing for
barter or having in possession for sale, trade, barter,
transporting or carrying in violation of this section constitutes
a separate misdemeanor offense. Notwithstanding this or any
other section of this chapter, any game birds or game bird
meats sold by licensed retailers may be served at any hotel,
restaurant or other licensed eating place in this state.
(d) The director may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code dealing with the sale of wildlife and the skins thereof.

§20-2-12. Transportation of wildlife out of state; penalties.

(a) A person may not transport or have in his or her possession with the intention of transporting beyond the limits of the state any species of wildlife or any part thereof killed, taken, captured or caught within this state, except as provided in this section.

(1) A person legally entitled to hunt and fish in this state may take with him or her personally, when leaving the state, any wildlife that he or she has lawfully taken or killed, not exceeding, during the open season, the number that any person may lawfully possess.

(2) Licensed resident hunters and trappers and resident and nonresident fur dealers may transport beyond the limits of the state pelts of game and fur-bearing animals, fur-bearer parts, including carcasses for the making of lures and baits, carcass parts, including glands, skulls, claws, and bones, and fur-bearer urine taken during the legal season.

(3) A person may transport the hide, head, antlers and feet of a legally killed deer and the hide, head, skull, organs and feet of a legally killed black bear beyond the limits of the state.

(4) A person legally entitled to possess an animal according to §20-2-4 of this code may transport that animal, including the parts or urine of that animal, beyond the limits of the state.

(b) The director may promulgate rules in accordance with §29A-3-1 et seq. of this code dealing with the transportation and tagging of wildlife, parts, urine and skins.

(c) A person who violates this section by transporting or possessing with the intention of transporting beyond the
limits of this state deer or wild boar shall be considered to
have committed a separate offense for each animal so
transported or possessed. This section does not apply to
captive cervids regulated pursuant to §19-2H-1 et seq. of
this code.

(d) A person violating this section shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than $20 nor more than $300 or be confined in jail
not less than 10 nor more than 60 days, or both.

(e) This section does not apply to persons legally
entitled to propagate and sell wild animals, wild birds, fish,
amphibians and other forms of aquatic life beyond the limits
of the state.

§20-2-49. Licenses for dealers in furs, pelts, etc.

The director may issue licenses for buying or dealing in
raw furs, pelts or skins, and carcasses for the making of lures
and baits, carcass parts, including glands, skulls, claws, and
bones, and fur-bearer urine of fur-bearing animals as
follows:

(1) A resident county license, which shall apply only to
the county or counties designated on the license and shall be
issued only to persons who have been bona fide residents of
this state for a period of at least six months prior to the date
of application, and of a county in which the privilege is to
be exercised. A license shall apply to the county for which
issued and to such adjacent counties as are designated in the
license. A fee of $1 for each county shall accompany the
application;

(2) A resident statewide license, which shall apply to all
counties in the state and shall be issued only to persons who
have been bona fide residents of this state for a period of at
least six months prior to the date of application. A fee of $10
shall accompany the application;
(3) A nonresident statewide license, which shall apply to all counties in the state and shall be issued only to nonresidents. A fee of $50 shall accompany the application; and

(4) An agent’s permit which shall apply to a person employed by a licensee under subsections (1), (2) or (3) above, to buy or deal as an agent of the licensee other than at the place of business of the licensee. A fee of $2.50 for each such agent shall accompany the application.

CHAPTER 178

(Com. Sub. for H. B. 2540 - By Delegates Harshbarger, Paynter, Sypolt, Cooper, Hanna, Bibby, Hott and N. Brown)

[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 §20-2-5i, relating to prohibiting the waste of any edible portion of big game animals or game fish; defining the term edible portion; setting forth exceptions to the term edible portion; making it unlawful to take any big game and detach or remove the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste; setting forth exceptions if the person is unable to locate the carcass of any lawfully taken big game prior to the spoilage or decay of any or all edible portions; and establishing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5i. Waste of game animals, game birds, or game fish; penalties.
(a) It is unlawful for any person to cause through carelessness, neglect, or otherwise to let any edible portion of any big game or game fish to go to waste needlessly.

(b) For purposes of this section, “edible portion” means, with respect to:

(1) *Big game.* — One or more of the following: (A) the meat of the front quarters to the knee; (B) the meat of the hind-quarters to the hock; or (C) the meat along the backbone between the front quarters and hind quarters: *Provided,* That an edible portion of a wild turkey is the meat of the breast only.

(2) *Game fish.* — The fillet meat from the gill plate to the tail fin.

(3) Edible portion does not include bones, sinew, viscera, meat from the head or neck, meat that has been damaged or rendered inedible by method of taking, or meat that is reasonably lost as a result of boning or close trimming of bones.

(c) It is unlawful for any person to take any big game and detach or remove from the carcass the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste.

(d) Any person who through no carelessness, neglect, or otherwise, is unable to locate the carcass of any lawfully taken big game prior to the spoilage or decay of any or all edible portions may detach or remove from the carcass the head, hide, antlers, tusks, paws, claws, gall bladder, teeth, beards, or spurs: *Provided,* That the big game is registered and shall be counted toward the daily, seasonal, bag, and possession limit of the person in possession of, or responsible for taking the big game.

(e) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the following penalties, with respect to:

(1) *Big game violations.* —
(A) A fine of not less than $500 nor more than $2,500, or confinement in jail not less than 10 days nor more than 100 days, or both fined and confined;

(B) Suspension of hunting and fishing license for a period of five years; and

(C) All applicable forfeiture and replacement provisions in §20-2-5a of this code.

(2) Game fish violations. —

(A) A fine of not less than $100 nor more than $500, or confinement in jail not less than 10 days nor more than 100 days, or both fined and confined;

(B) Suspension of hunting and fishing license for a period of two years; and

(C) All applicable forfeiture and replacement provisions in §20-2-5a of this code.

CHAPTER 179

(H. B. 2709 - By Delegates Atkinson, Worrell, McGeehan, Westfall, Miller, Swartzmiller, Kessinger, Cadle, Cooper and N. Brown)

[By Request of the Division of Natural Resources, Department of Commerce]

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

AN ACT to amend and reenact §20-2-27 of the Code of West Virginia, 1931, as amended, relating to hunting licenses; and exempting the list of names, addresses and contact information for license holders from public disclosure with certain exceptions.

Be it enacted by the Legislature of West Virginia:
ARTICLE 2. WILDLIFE RESOURCES.


(a) Except as otherwise provided by law, no resident who has reached his or her 15th birthday and who has not reached his or her 65th birthday before January 1, 2012, and no nonresident shall at any time take, hunt, pursue, trap for, kill or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit and then only during the respective open seasons, except that a nonresident who has not reached his or her 15th birthday may fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit. A person under the age of 15 years shall not hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.

(b) A resident or nonresident member of any club, organization, or association or persons owning or leasing a game preserve or fish preserve, plant, or pond in this state shall not hunt or fish therein without first securing a license or permit as required by law: Provided, That resident landowners or their resident children, or bona fide resident tenants of land, may, without a permit or license, hunt and fish on their own land during open seasons in accordance with laws and rules applying to such hunting and fishing unless the lands have been designated as a wildlife refuge or preserve.

(c) Licenses and permits shall be of the kinds and classes set forth in this article and shall be conditioned upon the payment of the fees established for the licenses and permits.

(d) The list of names, addresses and other contact information of all licensees compiled and maintained by the division as a result of the sale and issuance of any resident
or nonresident licenses or stamps under this chapter is exempt from disclosure under the Freedom of Information Act, §29B-1-1, et seq., of this code: Provided, That the records specified in this section shall be available to all law-enforcement agencies and other governmental entities authorized to request or receive such records.

CHAPTER 180

(Com. Sub. for H. B. 2715 - By Delegates Harshbarger, Worrell, McGeehan, Westfall, Miller, Swartzmiller, Kessinger, Cadle, Cooper and N. Brown)

[By Request of the Division of Natural Resources]

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

AN ACT to amend and reenact §20-2-46e of the Code of West Virginia, 1931, as amended, relating to Class Q special hunting permit for disabled persons; expanding the conditions of permanent disability for which an individual can obtain a Class Q permit; and providing that physician assistants, advanced practice registered nurses, and chiropractic physicians may certify Class Q permit applications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special hunting permit for disabled persons.

(a) A Class Q permit is a special statewide hunting permit entitling the permittee to hunt all legal species of game during the designated hunting seasons from a motor vehicle in accordance with the provisions of this section.
(b) The director shall furnish an application and a Class Q permit will be issued to applicants who meet one of the following conditions of permanent disability:

1. Permanent or irreversible physical disability that prevents ability to ambulate without use of a wheelchair, walker, crutches, one leg brace or external prosthesis above the knee, or two leg braces or external prostheses below the knees for mobility.

2. Multiple conditions that result in a minimum of 90 percent loss of use of a lower extremity.

3. Lung disease to the extent that forced expiratory volume for one second when measured by spirometry is less than one liter or the arterial oxygen tension less than 60 millimeters of mercury on room air at rest.

4. Cardiovascular disease to the extent that functional limitations are classified in severity as class 3 or 4, according to standards set by the American Heart Association and where ordinary physical activity causes palpitation, dyspnea or anginal pain.

(c) A licensed physician, physician assistant, advanced practice registered nurse or chiropractic physician must certify the applicant’s permanent disability by completing the permit application. The Class Q permit application shall be submitted to the division, which will issue a wallet sized card to the permittee.

(d) A person with a Class Q permit may not hunt or trap under the provisions of this section unless he or she is in possession of the Class Q permit card, a valid hunting license issued pursuant to §20-2-1 et seq. of this code or is a person excepted from licensing requirements pursuant to §20-2-27 and §20-2-28 of this code, and all documents or other lawful authorizations as prescribed in §20-2-37 of this code.

(e) A Class Q permit entitles the holder to hunt from a motor vehicle and, notwithstanding the provisions of §20-
2-5 of this code, to possess a loaded firearm in a motor vehicle, but only under the following circumstances:

(1) The motor vehicle is stationary;
(2) The engine of the motor vehicle is not operating;
(3) The permittee and one individual, who is at least 16 years of age, to assist the permittee are the only occupants of the vehicle;
(4) The individual assisting the permittee may not hunt with a firearm, bow, or crossbow while assisting the permittee;
(5) The vehicle is not parked on the right-of-way of any public road or highway; and
(6) The permittee observes all other pertinent laws and regulations.

(f) The director may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code setting forth the qualifications of applicants and the permitting process.

CHAPTER 181

(H. B. 2716 - By Delegates Harshbarger, Worrell, McGeehan, Westfall, Miller, Swartzmiller, Atkinson, Kessinger, Cadle, Cooper and Porterfield)

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

AN ACT to amend and reenact §20-7-13 of the Code of West Virginia, 1931, as amended, relating to vessel lighting and equipment requirements.
Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-13. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.

(a) Vessels on the waters of this state are subject to lighting requirements, equipment requirements, and pilot and navigation rules, as contained in the federal navigation laws and rules promulgated by the United States Coast Guard pursuant to 33 C.F.R. Subchapter E et seq. Inland Navigation Rules, as authorized by 46 U.S.C. §4302.

(b) Vessels on the waters of this state are subject to ventilation requirements as contained in federal navigation laws and rules promulgated by the United States Coast Guard pursuant to 46 C.F.R. §25.40 et seq., as authorized by 6 U.S.C. §4302.

(c) The director may promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States Coast Guard.

(d) The director may promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code, pilot rules in conformity with the pilot rules contained in the federal navigation laws, or the navigation rules promulgated by the United States Coast Guard for the operation of vessels on the waters of this state.

(e) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.
CHAPTER 182

(Com. Sub. for H. B. 2809 - By Delegates Shott, Capito, Mandt, Paynter, Ellington, Porterfield and Evans)

[Passed March 8, 2019; in effect ninety days from passage.] [Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §20-14-8 of the Code of West Virginia, 1931, as amended, relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area; increasing fines for persons who do not remain within and on a designated and marked trail within the Hatfield-McCoy Recreation Area; and increasing fines for persons who do not remain within and on a designated and marked trail within the Hatfield-McCoy Recreation Area and cause property damage to a landowner’s property outside the designated and marked trails or interfere with a landowner’s or lawful possessor’s use of property outside the designated and marked trails within the Hatfield-McCoy Recreation Area.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.


(a) A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the
ownership or lease of the land and not for recreational purposes;

(b) A person may not consume or possess any alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, or wine at any time or any location within the Hatfield-McCoy Recreation Area.

(c) The operator and all passengers of a motor vehicle within the Hatfield-McCoy Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute Standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard no. 218 or Snell Memorial Foundation Safety Standards for protective headgear for vehicle users.

(d) Each trail user shall obey all traffic laws, traffic-control devices, and signs within the Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor vehicles, motorcycles, or those equipped with roll cages.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area.

(f) A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time from one-half hour after sunset until one-half hour before sunrise, except in an emergency.

(g) Every person within the Hatfield-McCoy Recreation Area who is under 16 years of age shall at all times be under the immediate supervision of, and within sight of, a person who is at least 18 years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent,
guardian, or supervising adult may allow a child under the age of 16 years to leave that person’s sight and supervision within the Hatfield-McCoy Recreation Area.

(h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area except at a clearly marked location at a trailhead center.

(i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle in any competition or exhibition of speed, acceleration, racing, test of physical endurance, or climbing ability unless in an event sanctioned by the authority.

(j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area is subject to all of the duties applicable to the driver of a motor vehicle by the provisions of §17C-1-1 et seq. of this code except where inconsistent with the provisions of this article and except as to those provisions of §17C-1-1 et seq. of this code which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

(k) A person may not possess a glass container while riding on a motor vehicle within the Hatfield-McCoy Recreation Area.

(l) A person may not operate or ride in a utility terrain vehicle, as defined in §17F-1-1 et seq. of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting at a minimum federal motor vehicle safety standard and properly worn by the driver and all passengers.

(m) (1) No child under the age of six years may be allowed on any trail within the Hatfield-McCoy Recreation Area; and
(2) No child under the age of eight years who is required to be placed in a child passenger safety device system meeting applicable federal motor vehicle safety standards pursuant to §17C-15-46 of this code while occupying a motor vehicle may be allowed on any trail within the Hatfield-McCoy Recreation Area; and

(3) All persons operating or riding upon an ATV, UTV, or motorcycle as defined in §20-15-1 et seq. of this code shall follow the manufacturer’s recommendations for that vehicle relating to age and size limitations for operators and passengers.

(n) (1) A person who violates any provision of this section, except for subsection (e), is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

(2) A person who violates subsection (e) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000: Provided, That in the event the person’s violation of subsection (e) of this section causes damage to a landowner’s property outside of the designated and marked trail within the Hatfield-McCoy Recreation Area or interferes with a landowner’s or lawful possessor’s use of the property outside of the designated and marked trail within the Hatfield-McCoy Recreation Area, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2,000.

(3) Prosecution or conviction for the misdemeanors described in this subsection may not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.
AN ACT to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-5-4 of said code, all relating to the ability of the Director of the Division of Natural Resources to authorize repair, renovation and rehabilitation for existing facilities, buildings, amenities, and infrastructure and exempting these certain Division of Natural Resources’ purchases from review and approval of the Division of Purchasing; adding state forests to the definition of recreational facilities; authorizing the completing the feasibility study for the Beech Fork State Park Lodge; requiring two public hearings; and requiring the completed feasibility study to be submitted to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director may:

4 (1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes
adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the Division of Natural Resources any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That intergovernmental cooperative agreements and agreements with nongovernmental organizations in furtherance of providing a comprehensive program for the exploration, conservation, development, protection, enjoyment and use of the natural resources of the state are exempt from the provisions of §5A-3-1 et seq. of this code: Provided, however, That repair, renovation, and rehabilitation of existing facilities, buildings, amenities, and infrastructure necessary to protect public health or safety or to provide uninterrupted enjoyment and public use of state parks, state forests, wildlife management areas and state natural areas under the jurisdiction of the Division of Natural Resources are exempt from the provisions of §5A-3-1 et seq. of this code. Nothing in this section authorizes new construction of buildings and new construction of recreational facilities as defined in §20-5-4 of this code without complying with the provisions of §5A-3-1 et seq. of this code.

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter.

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the
Natural Resources Commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the Natural Resources Commission before the season and bag limits are fixed by it;

(7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the Governor in case of an emergency such as a drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours’ notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(8) Supervise the fiscal affairs and responsibilities of the division;

(9) Designate such localities as he or she shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(11) Acquire for the state in the name of the Division of Natural Resources by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the Division of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he or she deems suitable for the following purposes:
(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and the rules issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his or her supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha State Forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. The director must obtain the written permission of the Governor to sell timber when the appraised value is more than $5,000. The director shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication
area for the publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director may reject any and all bids and readvertise for bids. If the foregoing provisions of this section have been complied with and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he or she deems appropriate, but the sale price may not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section may extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber may not be validated by this section if a contract is otherwise invalid. The proceeds arising from the sale of the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter: Provided, That nothing contained herein may prohibit the sale of timber which otherwise would be removed from right-of-way’s necessary for and strictly incidental to the extraction of minerals;

(14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel and any other minerals that may be found in the lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The director, before making sale or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for such publication shall be each county in which such lands are located. The minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the proper performance of the sales contract or lease as the director shall designate; but the director may reject any and all bids
and readvertise for bids. The proceeds arising from any such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for the protection of forests and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(16) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(17) Report to the Governor each year all information relative to the operation and functions of the division and the director shall make such other reports and recommendations as may be required by the Governor, including an annual financial report covering all receipts and disbursements of the division for each fiscal year, and he or she shall deliver the report to the Governor on or before December 1, next after the end of the fiscal year so covered. A copy of the report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office, except as otherwise provided by law;

(19) Offer and pay, in his or her discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he or she may determine to be necessary from any person issued a license or permit
under the provisions of this chapter, but no person may be
required to disclose secret processes or confidential data of
competitive significance;

(21) Purchase as provided by law all equipment
necessary for the conduct of the division;

(22) Conduct and encourage research designed to
further new and more extensive uses of the natural resources
of this state and to publicize the findings of the research;

(23) Encourage and cooperate with other public and
private organizations or groups in their efforts to publicize
the attractions of the state including, completing the
feasibility study for the Beech Fork State Park Lodge as
follows:

(A) The director shall convene, prior to October 1, 2019,
two public hearings:

(i) An initial public hearing shall be for the purpose of
seeking public input regarding options for the construction
of a lodge and a conference center, including all available
public, private, or public-private partnership (PPP) funding
and financing options; and

(ii) A subsequent public hearing at which the feasibility
study and any recommendation shall be available for public
comment;

(B) The public hearings required by this subdivision
must be held in a suitable location reasonably close to Beech
Fork State Park so as to accommodate public participation
from the citizens of Cabell, Lincoln, and Wayne counties;
and

(C) Upon completion of the feasibility study it shall be
submitted by the director to the Joint Committee on
Government and Finance on or before December 1, 2019;
(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the division for all purposes specified in this chapter and he or she shall account for and report on all such receipts and expenditures to the Governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value and to take such steps as may be necessary in establishing the monuments or parks as he or she deems advisable;

(26) Maintain in his or her office at all times, properly indexed by subject matter and also in chronological sequence, all rules made or issued under the authority of this chapter. The records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his or her office, except the power to execute contracts not related to land and stream management, to appointees and employees of the division, who shall act under the direction and supervision of the director and for whose acts he or she shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the division in moving his or her household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee may be paid more frequently than once in twelve months;
(30) Establishing procedures and fee schedule for individuals applying for limited permit hunts; and

(31) Promulgate rules, in accordance with the provisions of §29A-1-1 et seq. of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

§20-5-4. Definitions; state parks and recreation system.

As used in this article, unless the context clearly requires otherwise:

“Bonds” shall mean bonds issued by the director.

“Cost of project” shall embrace the cost of construction, the cost of all land, property, material and labor which are deemed essential thereto, cost of improvements, financing charges, interest during construction and all other expenses, including legal fees, trustees’, engineers’ and architects’ fees which are necessary or properly incidental to the project.

“Project” shall be deemed to mean collectively the acquisition of land, the construction of any buildings or other works, together with incidental approaches, structures and facilities, reasonably necessary and useful in order to provide new or improved recreational facilities.

“Recreational facilities” shall mean and embrace cabins, lodges, swimming pools, golf courses, restaurants, commissaries and other revenue producing facilities in any state park or state forest.

“Rent or rental” shall include all moneys received for the use of any recreational facility.
CHAPTER 184

(Com. Sub. for S. B. 60 - By Senators Plymale and Stollings)

[Passed March 6, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6, and §30-20A-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-20A-10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15, and §30-20A-16, all relating to licensing the practice of athletic training; making the practice of athletic training unlawful without license or permit; establishing applicable law; defining terms; establishing eligibility for license; defining the scope of practice; establishing requirements for reciprocal agreements; establishing requirements for temporary permits; establishing renewal requirements; establishing requirements for delinquent or expedited licenses; establishing requirements for an active license; creating exemptions; requiring display of license; establishing complaint process and investigation procedures; establishing grounds for disciplinary action; establishing hearing procedures and right to appeal; providing for judicial review of decision; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20A. ATHLETIC TRAINERS.

§30-20A-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice athletic training in this state without a license or
permit issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are an athletic trainer unless the person has been duly licensed or permitted under the provisions of this article, and the license or permit has not expired, been suspended, or revoked.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of athletic training, except through a licensee or permittee.

c) A person may not advertise or represent himself or herself as an “athletic trainer”, “licensed athletic trainer”, “certified athletic trainer”, “athletic trainer certified”, “L.A.T.”, “C.A.T.”, and/or “ATC” or make use of any words, abbreviations, titles, or insignia that indicate, imply, or represent that he or she is an athletic trainer, unless he or she is licensed by the board.


The practices licensed under the provisions of this article and the Board of Physical Therapy are subject to §30-1-1 et seq. and §30-20A-1 et seq. of this code and any rules promulgated hereunder.

(a) The board has all the powers and duties set forth in this article, by rule, §30-1-1 et seq. of this code, and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings, and administer examinations;

(2) Establish requirements for licenses and permits;

(3) Establish procedures for submitting, approving, and rejecting applications for licenses and permits;
(4) Determine the qualifications of any applicant for licenses and permits;

(5) Prepare, conduct, administer, and grade examinations for licenses;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(8) Hire, discharge, establish the job requirements, and fix the compensation of the executive secretary;

(9) Maintain an office, and hire, discharge, establish the job requirements, and fix the compensation of employees, investigators, and contracted employees necessary to enforce the provisions of this article;

(10) Investigate alleged violations of the provisions of this article, legislative rules, orders, and final decisions of the board;

(11) Conduct disciplinary hearings of persons regulated by the board;

(12) Determine disciplinary action and issue orders;

(13) Institute appropriate legal action for the enforcement of the provisions of this article;

(14) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(15) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(16) Establish the continuing education requirements for licenses;
(17) Issue, renew, combine, deny, suspend, restrict, revoke, or reinstate licenses and permits;

(18) Establish a fee schedule;

(19) Take all other actions necessary and proper to effectuate the purposes of this article;

(20) Propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code to implement provisions of this article, including:

(A) Establish standards and requirements for licenses and permits;

(B) Establish procedures for examinations and re-examinations;

(C) Establish requirements for third parties to prepare and administer examinations and re-examinations;

(D) Establish educational and experience requirements;

(E) Establish the passing grade on examinations;

(F) Establish standards for approval of courses and curriculum;

(G) Establish procedures for the issuance and renewal of licenses and permits;

(H) Establish a fee schedule;

(I) Establish continuing education requirements for licenses;

(J) Establish the procedures for denying, suspending, restricting, revoking, reinstating, or limiting the practice of licensees and permittees;

(K) Adopt a standard for ethics;
(L) Establish requirements for inactive or revoked licenses or permits;

(M) Any other rules necessary to effectuate the provisions of this article; and

(N) All of the board’s rules in effect January 1, 2020, shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this section are interpreted to mean provisions of this article;

(21) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the West Virginia Board of Physical Therapy Fund which is continued. The fund is used by the board for the administration of this article. Except as may be provided in §30-1-1 et seq. of this code, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund;

(22) Any amounts received as fines pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

(c) The board may:

(1) Contract with third parties to administer examinations required under the provisions of this article;

(2) Sue and be sued in its official name as an agency of this state; and

(3) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

§30-20A-3. Definitions.

As used in this article:
“Applicant” means any person making application for an original or renewal license to act as an athletic trainer under the provisions of this article.

“Athletic injury or condition” means any injury or condition sustained by an individual that occurs during, or as a result of, the individual’s participation in organized athletic or recreational athletic activity that requires physical strength, agility, flexibility, speed, stamina, or range of motion or a substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition.

“Athletic trainer” is an individual engaged in the practice of athletic training who holds a license under the provisions of this article.

“Athletic training” and “the practice of athletic training” means the care and services provided by a licensed athletic trainer as described under the provisions of this article.

“Board” means the West Virginia Board of Physical Therapy established under §30-20-1 et seq. of this code.

“Consulting” means that an athletic trainer renders an opinion or advice to another athletic trainer or health care provider through telecommunication or other means or electronic communication.

“Direct supervision” means the licensed athletic trainer must be physically present and be able to intervene on behalf of the athletic training student, permittee, and patient when the athletic training student is providing athletic training services.

“General supervision” means referral by prescription to treat conditions for an athletic injury or condition from a licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic, podiatrist, or physical therapist except that the physical presence of the licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic, podiatrist, or physical
therapist is not required if the supervising licensed doctor of medicine, doctor of osteopathy, doctor of chiropractic, podiatrist, or physical therapist is readily available for consultation by direct communication, radio, telephone, facsimile, telecommunication, or other electronic means.

“License” means an athletic trainer license or license to act as an athletic trainer issued by the board under the provisions of this article.

“Licensee” means a person licensed as an athletic trainer under the provisions of this article.

“Permittee” means any person holding a temporary permit issued pursuant to the provision of this article.

“Permit” or “temporary permit” means a temporary permit issued under the provisions of this article.

“The practice of athletic training” means the services as described in §30-20A-5 of this code.

§30-20A-4. License to practice athletic training.

(a) To be eligible for a license to engage in the practice of athletic training, the applicant must:

(1) Be at least 18 years of age;

(2) Submit an application in the form prescribed by the board;

(3) An athletic trainer registration issued by the board prior to January 1, 2020, is considered a license issued under this article: Provided, That a person holding a license issued prior to January 1, 2020, must renew the license pursuant to a registration and renewal schedule adopted by the board and the provisions of this article;

(4) If subsequent to January 1, 2020, be a graduate of an accredited institution as approved by the Commission on
Accreditation of Athletic Training Education or successor organization;

(5) Pass a national examination approved by the board;

(6) Complete a criminal background check as required by §30-1D-1 of this code;

(7) Pay the required fee;

(8) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(9) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license which conviction remains unreversed;

(10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of athletic training, which conviction remains unreversed; and

(11) Has fulfilled any other requirement specified by the board.

(b) An athletic trainer shall use the letters “LAT” immediately following his or her name followed by the “ATC” credential to designate licensure under this article.

§30-20A-5. Scope of practice of an athletic trainer.

(a) The practice of athletic training is defined as the application of principles, methods, and procedures for managing athletic injuries or conditions, which shall include the prevention, emergency care, clinical examination and assessment, therapeutic intervention, and treatment of
athletic injuries or conditions through the use of appropriate preventative and supportive devices, and within the professional preparation and education of a licensed athletic trainer subject to the general supervision within this article. Athletic training includes recognizing illness and referring to the appropriate health care professional and implementation of treatment pursuant to the orders of those professionals listed under “General Supervision” within this article. Athletic training also includes instruction to coaches, athletes, parents, medical personnel, and communities in the area of care and prevention of athletic injuries or conditions.

(b) The scope of practice described in this section does not include the practice of physical therapy, the practice of occupational therapy, the practice of medicine, the practice of osteopathic medicine, surgery, the practice of chiropractic, or the management of systemic medical or neurological conditions or diseases of body systems that are not within the professional preparation and education of a licensed athletic trainer.

§30-20A-6. License to practice athletic training from another jurisdiction.

(a) The board may issue a license to practice athletic training to an applicant who holds a valid license or other authorization to practice athletic training from another state, if the applicant:

(1) Holds a license or other authorization to practice athletic training in another state which was granted after completion of educational requirements substantially equivalent to those required in this state;

(2) Passed an examination that is substantially equivalent to the examination required in this state;

(3) Does not have charges pending against his or her license or other authorization to practice, and has never had a license or other authorization to practice revoked;
(4) Has paid the applicable fee;

(5) Is a citizen of the United States or is eligible for employment in the United States; and

(6) Has fulfilled any other requirement specified by the board.

(b) The board may issue a license to practice athletic training to an applicant who has been educated outside of the United States, if the applicant:

(1) Provides satisfactory evidence that the applicant’s education is substantially equivalent to the educational requirements for athletic trainers under the provisions of this article;

(2) Provides written proof that the applicant’s school of athletic training is recognized by its own ministry of education;

(3) Has undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule;

(4) Has paid the applicable fee;

(5) Is eligible for employment in the United States; and

(6) Completes any additional requirements as required by the board.

(c) The board may issue a restricted license to an applicant who substantially meets the criteria established in subsection (b) of this section.


(a) Upon completion of the application and payment of the nonrefundable fees, the board may issue a temporary permit, for a period not to exceed 90 days, to an applicant to
practice as an athletic trainer in this state if the applicant has completed the educational requirements set out in this article, pending the examination, and who works under the direct supervision of a licensed athletic trainer.

(b) The temporary permit expires 30 days after the board gives written notice to the permittee of the results of the first examination held following the issuance of the temporary permit, if the permittee receives a passing score on the examination. The permit shall expire immediately if the permittee receives a failing score on the examination.

(c) A temporary permit may be revoked by a majority vote of the board.

(d) An applicant may be issued only one temporary permit, and, upon the expiration of the temporary permit, may not practice as an athletic trainer until he or she is fully licensed under the provisions of this article.

§30-20A-8. Renewal requirements.

(a) All persons regulated by this article shall annually or biennially by June 30 renew his or her license by completing a form prescribed by the board and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a license and shall charge a late fee for any renewal not paid by the due date.

(c) The board shall require as a condition of renewal that each licensee complete continuing education as defined by rule.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

§30-20A-9. Delinquent and expired license requirements.

(a) If a license is not renewed when due, then the board shall automatically place the licensee on delinquent status.
(b) The fee for a person on delinquent status shall increase at a rate, determined by the board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of 36 months.

(c) Within 36 months of being placed on delinquent status, if a licensee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as set by rule.

(d) After 36 months of being placed on delinquent status, a license is automatically placed on expired status and cannot be renewed. A person whose license has expired must reapply for a new license.

§30-20A-10. Inactive license requirements.

(a) A licensee who does not want to continue an active practice shall notify the board in writing and be granted inactive status.

(b) A person granted inactive status is not subject to the payment of any fee and may not practice athletic training in this state.

(c) When the person wants to return to the practice of athletic training, the person shall submit an application for renewal along with all applicable fees as set by rule.

§30-20A-11. Exemptions from licensure.

The following persons are exempt from licensing requirements under the provisions of this article:

(1) A person who practices athletic training pursuant to a course of study at an institution of higher learning including, but not limited to, activities conducted at the institution of higher learning and activities conducted outside the institution if under the direct supervision of a licensed athletic trainer;
(2) An athletic trainer who practices athletic training in the United States armed services, United States Public Health Service or Veterans Administration pursuant to federal regulations for state licensure of health care providers;

(3) An athletic trainer who is licensed in another jurisdiction of the United States or credentialed to practice athletic training in another country if that person is teaching, demonstrating, or providing athletic training services in connection with teaching or participating in an educational seminar of no more than 60 calendar days in a calendar year;

(4) An athletic trainer who is licensed in another state if that person is consulting;

(5) An athletic trainer who is licensed in another jurisdiction, if that person by contract or employment is providing athletic training to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in the state for no more than 60 calendar days in a calendar year;

(6) An athletic trainer who is licensed in another jurisdiction who enters this state to provide athletic training during a declared local, state, or national disaster or emergency. This exemption applies for no longer than 60 calendar days in a calendar year following the declaration of the emergency. The athletic trainer shall notify the board of his or her intent to practice;

(7) An athletic trainer licensed in another jurisdiction who is forced to leave his or her residence or place of employment due to a declared local, state, or national disaster or emergency and due to the displacement seeks to practice as an athletic trainer. This exemption applies for no longer than 60 calendar days in a calendar year following the declaration of the emergency. The athletic trainer shall notify the board of his or her intent to practice;
(8) Nothing in this article may be construed to prohibit or otherwise limit the use of the term “athletic trainer” in secondary school settings by persons who were practicing athletic training under a West Virginia Board of Education Athletic Certification, provided the practice is in accordance with Board of Education policy in effect prior to July 1, 2011: Provided, That this provision only applies to persons practicing athletic training certified by the West Virginia Board of Education prior to July 1, 2011, and any additional persons practicing athletic training excluding these specified individuals, shall meet the provisions of this article; and

(9) Nothing contained in this article prohibits a person from practicing within his or her scope of practice as authorized by law.

§30-20A-12. Display of license.

(a) The board shall prescribe the form for a license and permit, and may issue a duplicate license or permit upon payment of a fee.

(b) Any person regulated by the article shall conspicuously display his or her license or permit at his or her principal business location.

§30-20A-13. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information and shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.
(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive secretary of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive secretary may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict, or revoke the license or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation, or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;
(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization revoked or suspended by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare, or safety of the public.

(h) For the purposes of subsection (g) of this section, effective January 1, 2020, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Administrative fine, not to exceed $1,000 per day per violation;

(5) Mandatory attendance at continuing education seminars or other training;

(6) Practicing under supervision or other restriction; or

(7) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.


(a) Hearings are governed by §30-1-8 of this code.
(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject, or modify the decision of the administrative law judge.

(d) Any member or the executive secretary of the board has the authority to administer oaths, examine any person under oath, and issue subpoenas and subpoenas duces tecum.

e) If, after a hearing, the board determines the licensee or permittee has violated provisions of this article or the board’s rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law, and a specific description of the disciplinary actions imposed.


Any licensee or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with §29A-5-4 of this code, and may appeal any ruling resulting from judicial review in accordance with §29A-6-1 et seq. of this code.

§30-20A-16. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee or permittee has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) A person violating §30-20A-1 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $5,000, or confined in jail not more than six months, or both fined and confined.
CHAPTER 185

(S. B. 119 - By Senators Trump and Boso)

[Passed January 29, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 8, 2019.]

AN ACT to amend and reenact §30-3C-1 and §30-3C-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3C-5, all relating to discovery in certain proceedings; specifying certain health care peer review documents are confidential and not subject to discovery; providing that a person who testifies before a review organization or is a member of a review organization shall not be required to testify or asked about his or her testimony; providing that peer review proceedings, communications, and documents of a review organization are confidential and privileged and shall not be subject to discovery; providing that an individual may be given access to documents used as basis for an adverse professional review action, subject to a protective order as may be appropriate; providing that privilege is not deemed to be waived unless the review organization executes a written waiver; defining terms; and addressing original source materials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-1. Definitions.

1 As used in this article:

2 “Document” means any information, data, reports, or records prepared by or on behalf of a health care provider and includes mental impressions, analyses, and/or work product.
“Health care facility” means any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care community, end-stage renal disease facility, home health agency, child welfare agency, group residential facility, behavioral health care facility or comprehensive community mental health center, intellectual/developmental disability center or program, or other ambulatory health care facility in and licensed, regulated, or certified by the State of West Virginia under state or federal law and any state-operated institution or clinic providing health care and any related entity to the health care facility as that term is defined in §55-7B-1 et seq. of this code.

“Health care provider” means a person, partnership, corporation, professional limited liability company, health care facility, entity or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including a physician, osteopathic physician, physician’s assistant, advanced practice registered nurse, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist, pharmacist, technician, certified nursing assistant, emergency medical services personnel, emergency medical services authority or agency, any person supervised by or acting under the direction of a licensed professional, any person taking actions or providing service or treatment pursuant to or in furtherance of a physician’s plan of care, a health care facility’s plan of care, medical diagnosis, or treatment; or an officer, employee, or agent of a health care provider acting in the course and scope of the officer’s, employee’s, or agent’s employment.

“Peer review” means the procedure for evaluation by health care providers of the quality, delivery, and efficiency of services ordered or performed by other health care professionals, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit,
ambulatory care review, claims review and patient safety
review, preparation for or simulation of audits or surveys of
any kind, and all forms of quality assurance/performance
improvement whether or not required by any statute, rule,
or regulation applicable to a health care facility or health
care provider.

“Review organization” means any committee,
organization, individual, or group of individuals
engaging in peer review, including, without limitation, a
hospital medical executive committee and/or
subcommittee thereof, a hospital utilization review
committee, a hospital tissue committee, a medical audit
committee, a health insurance review committee, a health
maintenance organization review committee, hospital,
medical, dental, and health service corporation review
committee, a hospital plan corporation review committee,
a professional health service plan review committee or
organization, a dental review committee, a physicians’
advisory committee, a podiatry advisory committee, a
nursing advisory committee, any committee or
organization established pursuant to a medical assistance
program, the Joint Commission on Accreditation of
Health Care Organizations or similar accrediting body or
any entity established by such accrediting body or to
fulfill the requirements of such accrediting body, any
entity established pursuant to state or federal law for peer
review purposes, and any committee established by one
or more state or local professional societies or institutes,
to gather and review information relating to the care and
treatment of patients for the purposes of: (i) Evaluating
and improving the quality of health care rendered; (ii)
reducing morbidity or mortality; or (iii) establishing and
enforcing guidelines designed to keep within reasonable
bounds the cost of health care. It shall also mean any
hospital board committee or organization reviewing the
professional qualifications or activities of its medical
staff or applicants for admission thereto, and any
professional standards review organizations established
or required under state or federal statutes or regulations.
§30-3C-3. Confidentiality of records.

(a) Any document prepared by or on behalf of a health care provider for the purpose of improving the quality, delivery, or efficiency of health care or for the purpose of credentialing or reviewing health care providers is confidential and privileged and shall not be subject to discovery in a civil action or administrative proceeding. Such documents include, without limitation:

(1) Nursing home, as referred to in §55-7B-6(e) of this code, incident or event reports, except reports pertaining to the plaintiff of that civil action, or reports of same or similar incidents within a reasonable time frame of the events at issue in the civil action, containing only factual information, but excluding personal identification information;

(2) Documents related to review organization proceedings for hiring, disciplining, terminating, credentialing, issuing staff privileges, renewing staff privileges, or alleged misconduct of a health care provider;

(3) Review organization documents;

(4) Quality control and performance improvement documents;

(5) Documents satisfying regulatory obligations related to quality assurance and performance improvement; and

(6) Reviews, audits, and recommendations of consultants or other persons or entities engaged in the performance of peer review.

(b) A person who testifies before a review organization, or who is a member of a review organization, shall not be required to testify regarding, or be asked about, his or her testimony before such review organization, deliberations of the review organization, or opinions formed as a result of the review organization’s proceedings. A person who testifies before a review organization, or who is a member of a review organization, shall not be prevented from
testifying in court or an administrative hearing as to matters within his or her personal knowledge.

(c) All peer review proceedings, communications, and documents of a review organization and all records developed or obtained during an investigation conducted pursuant to §30-3-1 et seq., §30-3E-1 et seq., and/or §30-14-1 et seq. of this code shall be confidential and privileged and shall not be subject to discovery in any civil action or administrative proceeding: Provided, That an individual may be given access to any document that was used as the basis for an adverse professional review action against him or her, subject to such protective order as may be appropriate to maintain the confidentiality of the information contained therein. Privilege is not deemed to be waived unless the review organization executes a written waiver authorizing the release of such peer review proceedings, communications, or documents.

(d) Nothing in this section limits the disclosure of peer review proceedings, communications, and documents by a review organization or a health care facility to a medical licensing board pursuant to the provisions of §30-3-1 et seq. and §30-14-1 et seq. of this code.

§30-3C-5. Original source; waivers; further proceedings.

Information available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were included in any report or analysis related to improving the quality, delivery, or efficiency of health care or for the purpose of credentialing or reviewing health care providers. Documents contained in peer review files are not discoverable on the basis that they were not created as part of the peer review process; rather, the document must be produced from the original source: Provided, That if the party seeking production can show that obtaining source documents will be unduly burdensome, the court may, in its discretion, order production of the nonprivileged documents contained in the peer review file.
AN ACT to amend and reenact §30-5-12b of the Code of West Virginia, 1931, as amended, relating generally to generic drug products; providing definitions; providing that when a pharmacist substitutes a drug the patient shall receive the savings which shall be equal to the difference in acquisition cost of the product prescribed and the acquisition cost of the substituted product; providing an exception for covered individuals; and clarifying that the West Virginia Board of Pharmacy has primary responsibility for enforcement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS, AND PHARMACIES.

§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.

(a) As used in this section:

(1) “Brand name” means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label, or wrapping at the time of packaging.

(2) “Covered entity” means:
(A) Any hospital or medical service organization, insurer, health coverage plan, or health maintenance organization licensed in the state that contracts with another entity to provide prescription drug benefits for its customers or clients;

(B) Any health program administered by the state in its capacity as provider of health coverage; or

(C) Any employer, labor union, or other group of persons organized in the state that contracts with another entity to provide prescription drug benefits for its employees or members.

(3) “Covered individual” means a member, participant, enrollee, contract holder, policy holder, or beneficiary of a covered entity who is provided a prescription drug benefit by a covered entity. The term “covered individual” includes a dependent or other person provided a prescription drug benefit through a policy, contract, or plan for a covered individual.

(4) “Generic name” means the official title of a drug or drug combination for which a new drug application, or an abbreviated new drug application, has been approved by the United States Food and Drug Administration and is in effect.

(5) “Substitute” means to dispense a therapeutically equivalent generic drug product in the place of the drug ordered or prescribed.

(6) “Equivalent” means drugs or drug products which are the same amounts of identical active ingredients and same dosage form and which will provide the same therapeutic efficacy and toxicity when administered to an individual and is approved by the United States Food and Drug Administration.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive
equivalent generic name drug or drug product unless, in the exercise of his or her professional judgment, the pharmacist believes that the less expensive drug is not suitable for the particular patient: Provided, That a substitution may not be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient.

(c) A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words “Brand Medically Necessary”. The following sentence shall be printed on the prescription form: “This prescription may be filled with a generically equivalent drug product unless the words ‘Brand Medically Necessary’ are written, in the practitioner’s own handwriting, on this prescription form”: Provided, That “Brand Medically Necessary” may be indicated on the prescription order other than in the prescribing practitioner’s own handwriting unless otherwise required by federal mandate.

(d) A verbal prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner indicates to the pharmacist that the prescription is “Brand Necessary” or “Brand Medically Necessary”. The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(e) A person may not by trade rule, work rule, contract or in any other way prohibit, restrict, limit, or attempt to prohibit, restrict, or limit the making of a generic name substitution under the provisions of this section. An employer or his or her agent may not use coercion or other means to interfere with the professional judgment of the pharmacist in deciding which generic name drugs or drug products shall be stocked or substituted: Provided, That this section may not be construed to permit the pharmacist to
generally refuse to substitute less expensive therapeutically
equivalent generic drugs for brand name drugs and that any
pharmacist so refusing is subject to the penalties prescribed
§30-5-34 of this code.

(f) A pharmacist may substitute a drug pursuant to the
provisions of this section only where there will be a savings
to the purchaser. Where substitution is proper, pursuant to
this section, or where the practitioner prescribes the drug by
generic name, the pharmacist shall, consistent with his or
her professional judgment, dispense the lowest retail cost-
effective brand which is in stock.

(g) If a pharmacist substitutes a drug pursuant to the
provisions of this section, the patient shall receive the
savings which shall be equal to the difference in the
patient’s acquisition cost of the product prescribed and the
acquisition cost of the substituted product: Provided, That
this subsection may not apply if the patient is a covered
individual.

(h) Each pharmacy shall maintain a record of any
substitution of an equivalent generic name drug product for
a prescribed brand name drug product on the file copy of a
written, electronic or verbal prescription or chart order. The
record shall include the manufacturer and generic name of
the drug product selected.

(i) All drugs shall be labeled in accordance with the
instructions of the practitioner.

(j) Unless the practitioner directs otherwise, the
prescription label on all drugs dispensed by the pharmacist
shall indicate the generic name using abbreviations, if
necessary, and either the name of the manufacturer or
packager, whichever is applicable in the pharmacist’s
discretion. The same notation will be made on the original
prescription retained by the pharmacist.
(k) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

1. Labeling products with the name of the original manufacturer and control number;

2. Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;

3. Marking products with an identification code or monogram; and

4. Labeling products with an expiration date.

(l) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code which establish a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within 90 days of the date of passage of this section and may be amended in accordance with the provisions of that chapter.

(m) A pharmacist may not substitute a generic-named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia Board of Pharmacy pursuant to this article or is found to be in violation of the requirements of the United States Food and Drug Administration.

(n) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant, or employee, notify the person presenting the prescription of
the substitution. The person presenting the prescription may refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

(o) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: “West Virginia law requires pharmacists to substitute a less expensive generic-named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise”. The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia Board of Pharmacy.

(p) The West Virginia Board of Pharmacy shall promulgate rules in accordance with §29A-3-1 et seq. of this code setting standards for substituted drug products and obtaining compliance with the provisions of this section. The board has the primary responsibility for enforcing the provisions of this section.

(q) Any person may file a complaint with the West Virginia Board of Pharmacy regarding any violation of the provisions of this article. The complaints shall be investigated by the Board of Pharmacy.

(r) Fifteen days after the board has notified, by registered mail, a person, firm, corporation, or copartnership that the person, firm, corporation, or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation, or copartnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by §30-5-22 of this code, suspend or revoke the permit of any person, firm, corporation, or copartnership to operate a pharmacy.
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180 (s) A pharmacist or pharmacy complying with the
181 provisions of this section may not be liable in any way for
182 the dispensing of a generic-named therapeutically
183 equivalent drug, substituted under the provisions of this
184 section, unless the generic-named therapeutically
185 equivalent drug was incorrectly substituted.

186 (t) In no event where the pharmacist substitutes a drug
187 under the provisions of this section may the prescribing
188 physician be liable in any action for loss, damage, injury, or
189 death of any person occasioned by or arising from the use
190 of the substitute drug unless the original drug was
191 incorrectly prescribed.

192 (u) Failure of a practitioner to specify that a specific
193 brand name is necessary for a particular patient may not
194 constitute evidence of negligence unless the practitioner had
195 reasonable cause to believe that the health of the patient
196 required the use of a certain product and no other.

CHAPTER 187

(Com. Sub. for S. B. 396 - By Senators Tarr and
Cline)

[Passed March 8, 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 §30-1-23, relating
to waiver of initial occupational licensing fees for certain
individuals; requiring boards and licensing authorities to
waive certain initial occupational licensing fees for low-
income individuals and military families; defining terms;
requiring individuals seeking waiver of initial occupational
licensing fees to apply on a form provided by the board or licensing authority; and granting rule-making authority.

*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.**

§30-1-23. Waiver of initial licensing fees for certain individuals; definitions.

1. (a) As used in this section:

2. (1) “Initial” means obtaining a license in West Virginia for the occupation sought for the first time;

3. (2) “Low-income individuals” means individuals in the local labor market as defined in §21-1C-2 of this code whose household adjusted gross income is below 130 percent of the federal poverty line. This term also includes any person enrolled in a state or federal public assistance program including, but not limited to, the Temporary Assistance for Needy Families Program, Medicaid, or the Supplemental Nutrition Assistance Program; and

4. (3) “Military families” means any person who serves as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U.S.C. §101, honorably discharged veterans of those forces, and their spouses. This term also includes surviving spouses of deceased service members who have not remarried.

5. (b) Each board or licensing authority referred to in this chapter shall waive all initial occupational licensing fees for the following classes of individuals:

6. (1) Low-income individuals; and

7. (2) Military families.
(c) Individuals seeking a waiver of initial occupational licensing fees must apply to the appropriate board or licensing authority in a format prescribed by the board or licensing authority. The board or licensing authority shall process the application within 30 days of receiving it from the applicant.

(d) The board or licensing authority shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement the provisions of this section.

CHAPTER 188

(Com. Sub. for S. B. 400 - By Senators Romano and Takubo)

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

AN ACT to amend and reenact §30-4-3, §30-4-8, and §30-4-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-4-8a, all relating generally to dentistry; permitting the West Virginia Board of Dentistry to create specialty licenses; setting forth those specialty licenses; changing the specific examination an applicant must pass before being issued a license to practice dentistry; changing the type of exam an applicant must pass before being issued a license to practice dental hygiene; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-3. Definitions.
As used in §30-4-1 et seq., §30-4A-1 et seq., and §30-4B-1 et seq. of this code, the following words and terms have the following meanings:

“AAOMS” means the American Association of Oral and Maxillofacial Surgeons;

“AAPD” means the American Academy of Pediatric Dentistry;

“ACLS” means advanced cardiac life support;

“ADA” means the American Dental Association;

“AMA” means the American Medical Association;

“ASA” means American Society of Anesthesiologists;

“Anxiolysis/minimal sedation” means removing, eliminating, or decreasing anxiety by the use of a single anxiety or analgesia medication that is administered in an amount consistent with the manufacturer’s current recommended dosage for the unsupervised treatment of anxiety, insomnia, or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use by the patient at home for the treatment of anxiety;

“Approved dental hygiene program” means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

“Approved dental school, college, or dental department of a university” means a dental school, college, or dental department of a university that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the
Commission on Dental Accreditation of the American Dental Association;

“Authorize” means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist’s diagnosis and treatment plan;

“BLS” means basic life support;

“Board” means the West Virginia Board of Dentistry;

“Business entity” means any firm, partnership, association, company, corporation, limited partnership, limited liability company, or other entity;

“Central nervous system anesthesia” means an induced, controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method;

“Certificate of qualification” means a certificate authorizing a dentist to practice a specialty;

“CPR” means cardiopulmonary resuscitation;

“Conscious sedation/moderate sedation” means an induced, controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration of other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

“CRNA” means certified registered nurse anesthetist;

“Defibrillator” means a device used to sustain asthmatic heartbeat in an emergency and includes an Automatic Electronic Defibrillator (AED);

“Delegated procedures” means those procedures specified by law or by rule of the board and performed by
dental auxiliary personnel under the supervision of a licensed dentist;

“Dentist anesthesiologist” means a dentist who is trained in the practice of anesthesiology and has completed an additional approved anesthesia education course;

“Dental assistant” means a person qualified by education, training or experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures as specified by the board by rule or who may perform nonclinical duties in the dental office;

“Dental auxiliary personnel” or “auxiliary” means dental hygienists and dental assistants who assist the dentist in the practice of dentistry;

“Dental hygiene” means the performance of educational, preventive or therapeutic dental services and as further provided in §30-4-11 of this code and legislative rule;

“Dental hygienist” means a person licensed by the board to practice and who provides dental hygiene and other services as specified by the board by rule to patients in the dental office and in a public health setting;

“Dental laboratory” means a business performing dental laboratory services;

“Dental laboratory services” means the fabricating, repairing, or altering of a dental prosthesis;

“Dental laboratory technician” means a person qualified by education, training, or experience who has completed a dental laboratory technology education program and who fabricates, repairs, or alters a dental prosthesis in accordance with a dentist’s work authorization;
“Dental office” means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry;

“Dental prosthesis” means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics;

“Dental public health” is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which considers the community to be the patient rather than any individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis;

“Dentist” means an individual licensed by the board to practice dentistry;

“Dentistry” means the evaluation, diagnosis, prevention, and treatment of diseases, disorders, and conditions of the oral cavity, maxillofacial area, and the adjacent and associated structures provided by a dentist;

“Direct supervision” means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed;

“Endodontics” is the branch of dentistry which is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp and associated periradicular conditions;
“Facility permit” means a permit for a facility where sedation procedures are used that correspond with the level of anesthesia provided;

“General anesthesia” means an induced, controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation or the inability to respond purposefully to verbal command;

“Deep conscious sedation/general anesthesia” includes partial loss of protective reflexes while the patient retains the ability to independently and continuously maintain an airway;

“General supervision” means a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedures, and will evaluate the treatment provided by the dental auxiliary personnel;

“Good moral character” means a lack of history of dishonesty;

“Health care provider BLS/CPR” means health care provider basic life support cardiopulmonary resuscitation;

“License” means a license to practice dentistry or dental hygiene;

“Licensee” means a person holding a license;

“Mobile dental facility” means any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed, or transported from one location to another;

“Portable dental unit” means any nonfacility in which dental equipment, utilized in the practice of dentistry, is
transported to and utilized on a temporary basis in an out-of-office location, including, but not limited to, patients’ homes, schools, nursing homes, or other institutions;

“Oral pathology” is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations;

“Oral and maxillofacial radiology” is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region;

“Oral and maxillofacial surgery” is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region;

“Orthodontics and dentofacial orthopedics” is the dental specialty that includes the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures;

“Other dental practitioner” means those persons excluded from the definition of the practice of dentistry under the provisions of §30-4-24(3), §30-4-24(4), and §30-4-24(5) of this code and also those persons who hold teaching permits which have been issued to them under the provisions of §30-4-14 of this code;

“PALS” means pediatric advanced life support;
“Pediatric dentistry” is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs;

“Pediatric patient” means infants and children;

“Periodontics” is that specialty of dentistry which encompasses the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function, and aesthetics of these structures and tissues;

“Physician anesthesiologist” means a physician, medical doctor, or doctor of osteopathy who is specialized in the practice of anesthesiology;

“Prosthodontics” is the dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with clinical conditions associated with missing or deficient teeth and/or oral and maxillofacial tissues using biocompatible substitutes;

“Public health practice” means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the board to require direct, general, or no supervision of a dental hygienist by a dentist;

“Public health setting” means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs, and any other place designated by the board by rule;

“Qualified monitor” means an individual who by virtue of credentialing and/or training is qualified to check closely
and document the status of a patient undergoing anesthesia and observe utilized equipment;

“Relative analgesia/minimal sedation” means an induced, controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen or single oral premedication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

“Specialty” means the practice of a certain branch of dentistry;

“Subcommittee” means West Virginia Board of Dentistry Subcommittee on Anesthesia; and

“Work authorization” means a written order for dental laboratory services which has been issued by a licensed dentist or other dental practitioner.

§30-4-8. License to practice dentistry.

(a) The board shall issue a license to practice dentistry to an applicant who meets the following requirements:

(1) Is at least 18 years of age;

(2) Is of good moral character;

(3) Is a graduate of and has a diploma from a school accredited by the Commission on Dental Accreditation or equivalently approved dental college, school, or dental department of a university as determined by the board;

(4) Has passed a national board examination as given by the Joint Commission on National Dental Examinations and a clinical examination administered by the Commission on Dental Competency Assessments, the Central Regional
Dental Testing Service, the Council of Interstate Testing Agencies, the Southern Regional Testing Agency, or the Western Regional Examining Board, or the successor to any of those entities, which demonstrates competency, and passed each individual component with no compensatory scoring in:

(A) Endodontics, including access opening of a posterior tooth and access, canal instrumentation, and obturation of an anterior tooth;

(B) Fixed prosthodontics, including an anterior crown preparation and two posterior crown preparations involving a fixed partial denture factor;

(C) Periodontics, including scaling and root planing in a patient-based clinical setting;

(D) Restorative, including a class II amalgam or composite preparation and restoration and a class III composite preparation and restoration in a patient-based clinical setting; and

(E) The board may consider clinical examinations taken prior to July 1, 2019, or individual state clinical examinations as equivalent which demonstrates competency.

(5) Has not been found guilty of cheating, deception, or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule; and

(7) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered.
(b) A dentist may not represent to the public that he or she is a specialist in any branch of dentistry or limit his or her practice to any branch of dentistry unless first issued a certificate of qualification in that branch of dentistry by the board.

(c) A license to practice dentistry issued by the board shall for all purposes be considered a license issued under this section: Provided, That a person holding a license shall renew the license.

§30-4-8a. Dental specialties.

(a) The Board of Dentistry may issue a dental specialty license authorizing a dentist to represent himself or herself to the public as a specialist, and to practice as a specialist, upon proper application and fee for each specialty and as provided pursuant to the provisions of this article.

(b) A dentist may not represent himself or herself to the public as a specialist, nor practice as a specialist, unless the individual:

(1) Has successfully completed a board-recognized dental specialty/advanced education program accredited by the Commission on Dental Accreditation;

(2) Holds a general dental license in this state; and

(3) Has completed any additional requirements set forth in state law or rules and has been issued a dental specialty license by the board.

(c) Specialties recognized by the board shall include:

(1) Dental public health. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of one full-time academic year of at least eight calendar months each of graduate or post-graduate education, internship, or residency.
(2) **Endodontics.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship, or residency.

(3) **Oral and maxillofacial surgery.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of three full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship, or residency.

(4) **Oral and maxillofacial radiology.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time years of at least eight calendar months each of graduate or post-graduate education, internship, or residency.

(5) **Orthodontics and dentofacial orthopedics.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship, or residency. In addition, any applicant for an orthodontic and dentofacial orthopedic specialty certificate commencing on July 1, 2019, shall submit verification of successful completion of the American Board of Orthodontics written examination.

(6) **Pediatric dentistry.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship, or residency.

(7) **Periodontics.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar
(8) **Prosthodontics.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship, or residency.

(9) **Oral pathology.** — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship, or residency.

(d) The licensee shall limit his or her practice of dentistry only to the specialty in which he or she is licensed and in which he or she holds himself or herself out to the public as a specialist.

(e) The licensee shall limit his or her listing in the telephone directory to the specialties in which he or she has an office or offices.

(f) The limitation of practice is removed for purposes of volunteering services in organized health clinics and at charitable events.

§30-4-10. License to practice dental hygiene.

(a) The board shall issue a dental hygienist license to an applicant who meets the following requirements:

1. Is at least 18 years of age;
2. Is of good moral character;
3. Is a graduate with a degree in dental hygiene from an approved dental hygiene program of a college, school, or dental department of a university;
(4) Has passed a national board examination as given by the Joint Commission on National Dental Examinations and passed a board-approved patient-based examination designed to determine the applicant’s level of clinical skills;

(5) Has not been found guilty of cheating, deception, or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule; and

(7) Is not an alcohol or drug abuser, as those terms are defined in §27-1A-11 of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered.

(b) A dental hygienist license issued by the board and in good standing on the effective date of the amendments to this section shall for all purposes be considered a dental hygienist license issued under this section: Provided, That a person holding a dental hygienist license shall renew the license.

CHAPTER 189

(Com. Sub. for S. B. 597 - By Senators Boso and 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 §30-38A-7, §30-38A-12, and §30-38A-17 of the Code of West Virginia, 1931, as amended, all relating to conforming the state law to the federal law for appraisal management companies’ registration; expanding
certification requirements; changing requirements for removing appraiser from panel; and imposing disciplinary action reporting requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.

§30-38A-7. Certification requirements.

(a) The certification for registration shall be in writing, on a form prescribed by the board and signed by the applicant or controlling person. The certification shall include statements that the applicant:

(1) Has a process in place to verify that any person used as an appraiser or added to the appraiser panel of the applicant is a licensed or certified appraiser in good standing in West Virginia;

(2) Has set requirements to verify that appraisers are geographically competent and can perform the appraisals assigned;

(3) Has set procedures for an appraiser, licensed or certified in this state or in any state with a minimum of the same certification level for the property type as the appraiser who performed the appraisal, to review the work of the appraisers performing appraisals for the applicant to verify that the appraisals are being conducted in accordance with the minimum Uniform Standards of Professional Appraisal Practice (USPAP) standards;

(4) Will require appraisals to be conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth in Lending Act and the rules and regulations issued pursuant to the Act, including the requirement that appraisers be compensated at a customary and reasonable rate when the
appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(5) Maintains a detailed record of each request for appraisal it receives from a client and the appraiser that performs the appraisal; and

(6) Has submitted any other information required by the board.

(b) The applicant, each owner, and any controlling person shall submit a written verification, on a form prescribed by the board, that includes statements that:

(1) The written application and verification for registration contain no false or misleading statements;

(2) The applicant has complied with the requirements of this article;

(3) The applicant, each owner, and the controlling person of the firm seeking registration has not pleaded guilty or nolo contendere to or been convicted of a felony;

(4) Within the past 10 years, the applicant, each owner, and the controlling person of the firm seeking registration has not pleaded guilty or nolo contendere to or been convicted of:

(A) A misdemeanor involving mortgage lending or real estate appraisals; or

(B) An offense involving breach of trust or fraudulent or dishonest dealing;

(5) The applicant, each owner, and the controlling person of the firm seeking registration are of good character and reputation and that none of them has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in this state or any other
jurisdiction, and the license or certification was not subsequently granted or reinstated;

(6) The applicant, each owner, and the controlling person of the firm seeking registration are not permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisals, appraisal management services, or operating an appraisal management company;

(7) The applicant, each owner, and the controlling person of the firm seeking registration are not the subject of an order of the board or any other jurisdiction’s agency that regulates appraisal management companies that denied, suspended, or revoked the applicant’s or firm’s privilege to operate as an appraisal management company;

(8) The applicant, each owner, and the controlling person of the firm seeking registration have not acted as an appraisal management company while not being properly registered by the board; and

(9) Set forth any other requirements of the board.

§30-38A-12. Requirements for removal from an appraiser panel.

(a) An appraisal management company may only remove an appraiser from an appraiser panel or refuse to assign appraisals to an appraiser after providing the appraiser 20 days’ prior written notice stating the reasons for the removal or refusal and providing an opportunity for the appraiser to be heard.

(b) An appraiser who is removed from an appraiser panel or refused appraisal assignments for an alleged act or omission that would constitute grounds for disciplinary action under the provisions of §30-38-12 of this code, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP), or a violation of state law or
legislative rule may file a complaint with the board for a review of the appraisal management company’s decision.

(c) The board’s review under this subsection is limited to determining whether:

(1) The appraisal management company has complied with subsection (a) of this section; and

(2) The appraiser has engaged in an act or omission that would constitute grounds for disciplinary action under the provisions of §30-38-12 of this code, or has committed a violation of the USPAP or a violation of state law or legislative rule.

(d) The board shall hold a hearing on the complaint within a reasonable time, not exceeding six months after the complaint was filed, unless there are extenuating circumstances that are noted in the board’s minutes.

(e) If the board determines after the hearing that an appraisal management company acted improperly, then the board shall order the appraisal management company to restore the appraiser to the appraiser panel or assign appraisals to the appraiser.

(f) After the board’s order, an appraisal management company may not:

(1) Reduce the number of appraisals given to the appraiser; or

(2) Penalize the appraiser in any other manner.

§30-38A-17. Notice and hearing procedures.

(a) The board, on its own motion or upon receipt of a written complaint, may investigate an appraisal management company, a person or firm associated with an appraisal management company, or a person or firm performing appraisal management services.
(b) If the board determines after the investigation there are grounds for disciplinary action, the board may hold a hearing after giving 30 days’ prior notice.

(c) The board has the same powers set out in §30-38-1 et seq. of this code.

(d) After notice and a hearing, the board may:

(1) Deny, revoke, or refuse to issue or renew the registration of an appraisal management company or restrict or limit the activities of an appraisal management company or of a person or firm that owns an interest in or participates in the business of an appraisal management company;

(2) Impose a fine not to exceed $25,000 for each violation; or

(3) Take other disciplinary action as established by the board by rule.

(e) The board may seek injunctive relief in the Kanawha County Circuit Court to prevent a person or firm from violating the provisions of this article or the rules promulgated hereunder. The circuit court may grant a temporary or permanent injunction.

(f) Within five days of a final disciplinary action, the board will report any action taken to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council via its extranet application.
CHAPTER 190

(Com. Sub. for S. B. 653 - By Senators Stollings and Maroney)

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

AN ACT to amend and reenact §30-3-15 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-9a of said code, all relating to medical corporations; updating terminology; providing that medical corporations may only practice medicine through certain licensees; permitting certain licensees to be employees of medical corporations; and providing that licensed hospitals do not need to obtain a certificate of authorization so long as the hospital does not exercise control of the independent medical judgment of a licensee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-15. Certificate of authorization requirements for medical corporations.

(a) Unlawful acts. — It is unlawful for any corporation to practice or offer to practice medicine, surgery, podiatric medicine, or to perform medical acts through one or more physician assistants in this state without a certificate of authorization issued by the board designating the corporation as an authorized medical corporation.

(b) Certificate of authorization for in-state medical corporation. — The board may issue a certificate of authorization for a medical corporation to one or more individuals licensed by the board. Licensees of the West
Virginia Board of Osteopathic Medicine may join with licensees of the board to receive a certificate of authorization from the board. Eligible licensees may apply for a certificate of authorization by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that each shareholder of the proposed medical or podiatry corporation is a licensed physician pursuant to this article, §30-3E-1 et seq., or §30-14-1 et seq. of this code; and

(3) Submitting applicable fees which are not refundable.

(c) Certificate of authorization for out-of-state medical corporation. — A medical corporation formed outside of this state for the purpose of engaging in the practice of medicine, surgery, and/or podiatric medicine may receive a certificate of authorization from the board to be designated a foreign medical corporation by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that the medical corporation has received a certificate of authorization or similar authorization from the appropriate authorities as a medical corporation or professional corporation in its state of incorporation and is currently in good standing with that authority;

(3) Furnishing satisfactory proof to the board that at least one shareholder of the proposed medical corporation is a licensed physician or podiatric physician pursuant to this article and is designated as the corporate representative for all communications with the board regarding the designation and continuing authorization of the corporation as a foreign medical corporation;
(4) Furnishing satisfactory proof to the board that all of the medical corporation’s shareholders are licensed physicians, podiatric physicians, or physician assistants in one or more states and submitting a complete list of the shareholders, including each shareholder’s name, their state or states of licensure, and their license number(s); and

(5) Submitting applicable fees which are not refundable.

(d) Notice of certificate of authorization to Secretary of State. — When the board issues a certificate of authorization to a medical corporation, then the board shall notify the Secretary of State that a certificate of authorization has been issued. When the Secretary of State receives a notification from the board, he or she shall attach that certificate of authorization to the corporation application and, upon compliance by the corporation with the pertinent provisions of this code, shall notify the incorporators that the medical corporation, through licensed physicians, podiatrists, and/or physician assistants may engage in the practice of medicine, surgery, or the practice of podiatry in West Virginia.

(e) Authorized practice of medical corporation. — An authorized medical corporation may only practice medicine and surgery through individual physicians, podiatric physicians, or physician assistants licensed to practice medicine and surgery in this state. Physicians, podiatric physicians, and physician assistants may be employees rather than shareholders of a medical corporation, and nothing herein requires a license for or other legal authorization of, any individual employed by a medical corporation to perform services for which no license or other legal authorization is otherwise required.

(f) Renewal of certificate of authorization. — A medical corporation holding a certificate of authorization shall register biennially, on or before the expiration date on its certificate of authorization, on a form prescribed by the board, and pay a biennial fee. If a medical corporation does
not timely renew its certificate of authorization, then its certificate of authorization automatically expires.

(g) Renewal for expired certificate of authorization. — A medical corporation whose certificate of authorization has expired may reapply for a certificate of authorization by submitting a new application and application fee in conformity with subsection (b) or (c) of this section.

(h) Ceasing operation - In-state medical corporation. — A medical corporation formed in this state and holding a certificate of authorization shall cease to engage in the practice of medicine, surgery, or podiatry when notified by the board that:

(1) One of its shareholders is no longer a duly licensed physician, podiatric physician, or physician assistant in this state; or

(2) The shares of the medical corporation have been sold or transferred to a person who is not licensed by the board or the Board of Osteopathic Medicine. The personal representative of a deceased shareholder shall have a period, not to exceed 12 months from the date of the shareholder’s death, to transfer the shares. Nothing herein affects the existence of the medical corporation or its right to continue to operate for all lawful purposes other than the professional practice of licensed physicians, podiatric physicians, and physician assistants.

(i) Ceasing operation - Out-of-state medical corporation. — A medical corporation formed outside of this state and holding a certificate of authorization shall immediately cease to engage in practice in this state if:

(1) The corporate shareholders no longer include at least one shareholder who is licensed to practice in this state pursuant to this article;
(2) The corporation is notified that one of its shareholders is no longer a licensed physician, podiatric physician, or physician assistant; or

(3) The shares of the medical corporation have been sold or transferred to a person who is not a licensed physician, podiatric physician, or physician assistant. The personal representative of a deceased shareholder shall have a period, not to exceed 12 months from the date of the shareholder’s death, to transfer the shares. In order to maintain its certificate of authorization to practice medicine and surgery, podiatric medicine, or to perform medical acts through one or more physician assistants during the 12-month period, the medical corporation shall, at all times, have at least one shareholder who is licensed in this state pursuant to this article. Nothing herein affects the existence of the medical corporation or its right to continue to operate for all lawful purposes other than the professional practice of licensed physicians, podiatric physicians, and physician assistants.

(j) Notice to Secretary of State. — Within 30 days of the expiration, revocation, or suspension of a certificate of authorization by the board, the board shall submit written notice to the Secretary of State.

(k) Unlawful acts. — It is unlawful for any corporation to practice or offer to practice medicine, surgery, podiatric medicine, or to perform medical acts through one or more physician assistants after its certificate of authorization has expired or been revoked, or if suspended, during the term of the suspension.

(l) Application of section. — Nothing in this section is meant or intended to change in any way the rights, duties, privileges, responsibilities, and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the practitioner-patient relationship. Nothing in this section shall be construed to require a hospital licensed pursuant to §16-5B-1 et seq. of this code to obtain a
certificate of authorization from the board so long as the hospital does not exercise control of the independent medical judgment of physicians and podiatric physicians licensed pursuant to this article.

(m) Court evidence. — A certificate of authorization issued by the board to a corporation to practice medicine and surgery, podiatric medicine, or to perform medical acts through one or more physician assistants in this state that has not expired, been revoked, or suspended is admissible in evidence in all courts of this state and is prima facie evidence of the facts stated therein.

(n) Penalties. — Any officer, shareholder, or employee of a medical corporation who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 per violation.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to Secretary of State of issuance of certificate; action by Secretary of State.

(a) One or more osteopathic physicians, allopathic physicians, or physician assistants may form an osteopathic medical corporation. An osteopathic physician or osteopathic physician assistant shall file a written application with the board on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer or all of the signers of such application is or are duly licensed. A reasonable fee, to be set by the board rules, shall accompany the application, no part of which shall be returnable.

(b) If the board finds that the signer or all of the signers of the application are licensed, the board shall notify the Secretary of State that a certificate of authorization has been issued.
(c) When the Secretary of State receives notification from the board that a certain individual or individuals has or have been issued a certificate of authorization, he or she shall attach the authorization to the corporation application and upon compliance by the corporation with §31-1-1 et seq. of this code, the Secretary of State shall notify the incorporators that the corporation may engage in the appropriate practice.

CHAPTER 191

(S. B. 668 - By Senators Azinger, Maynard, Palumbo, Prezioso, Roberts, Rucker, Stollings, Tarr, Takubo, Weld and Maroney)

[Passed March 6, 2019; in effect ninety days from passage.] [Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §30-3E-1, §30-3E-3, §30-3E-9, §30-3E-11, §30-3E-12, and §30-3E-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3E-10a, all relating to physician assistants collaborating with physicians in hospitals; requiring written notice to the appropriate licensing board; requiring rulemaking; amending scope of practice; providing for disciplinary proceedings for failure to provide timely notice of termination of practice notification; and specifying practice requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

As used in this article:
(1) “Advance duties” means medical acts that require additional training beyond the basic education program training required for licensure as a physician assistant.

(2) “Alternate collaborating physician” means one or more physicians licensed in this state and designated by the collaborating physician to provide collaboration with a physician assistant in accordance with an authorized practice agreement.

(3) “Approved program” means an educational program for physician assistants approved and accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor. Prior to 2001, approval and accreditation would have been by either the Committee on Allied Health Education and Accreditation or the Accreditation Review Commission on Education for the Physician Assistant.

(4) “Boards” means the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine.

(5) “Chronic condition” means a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication, and does not generally disappear. These conditions include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity.

(6) “Collaborating physician” means a doctor of medicine, osteopathy, or podiatry fully licensed, by the appropriate board in this state, without restriction or limitation, who collaborates with physician assistants.

(7) “Collaboration” means overseeing the activities of the medical services rendered by a physician assistant. Constant physical presence of the collaborating physician is not required as long as the collaborating physician and physician assistant are, or can be, easily in contact with one
another by telecommunication. Collaboration does not require the personal presence of the collaborating physician at the place or places where services are rendered.

(8) “Endorsement” means a summer camp or volunteer endorsement authorized under this article.

(9) “Health care facility” means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic, or physician’s office.

(10) “Hospital” means a facility licensed pursuant to §16-5B-1 et seq. of this code and any acute-care facility operated by the state government that primarily provides inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick persons under the supervision of physicians and includes psychiatric hospitals.

(11) “License” means a license issued by either of the boards pursuant to the provisions of this article.

(12) “Licensee” means a person licensed pursuant to the provisions of this article.

(13) “Physician” means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either §30-3-1 et seq. or §30-14-1 et seq. of this code to practice medicine and surgery in this state.

(14) “Physician assistant” means a person who meets the qualifications set forth in this article and is licensed pursuant to this article to practice medicine under collaboration.

(15) “Practice agreement” means a document that is executed between a collaborating physician and a physician assistant pursuant to the provisions of this article, and is filed with and approved by the appropriate licensing board.

(16) “Practice notification” means a written notice to the appropriate licensing board that a physician assistant will
practice in collaboration with one or more physicians in a hospital in the state of West Virginia.

§30-3E-3. Rulemaking.

(a) The boards 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, including:

(1) The extent to which physician assistants may practice in this state;

(2) The extent to which physician assistants may pronounce death;

(3) Requirements for licenses and temporary licenses;

(4) Requirements for practice agreements and practice notifications;

(5) Requirements for continuing education;

(6) Conduct of a licensee for which discipline may be imposed;

(7) The eligibility and extent to which a physician assistant may prescribe, including: A state formulary classifying those categories of drugs which may not be prescribed by a physician assistant, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals, and general anesthetics. Drugs listed under Schedule III shall be limited to a 30-day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a practice agreement or practice notification as set forth in this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a chronic condition is a...
condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication, and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity;

(8) The authority a collaborating physician may delegate for prescribing, dispensing, and administering of controlled substances, prescription drugs, or medical devices if the practice agreement includes:

(A) A notice of intent to delegate prescribing of controlled substances, prescription drugs, or medical devices;

(B) An attestation that all prescribing activities of the physician assistant shall comply with applicable federal and state law governing the practice of physician assistants;

(C) An attestation that all medical charts or records shall contain a notation of any prescriptions written by a physician assistant;

(D) An attestation that all prescriptions shall include the physician assistant’s name and the collaborating physician’s name, business address, and business telephone number legibly written or printed; and

(E) An attestation that the physician assistant has successfully completed each of the requirements established by the appropriate board to be eligible to prescribe pursuant to a practice agreement accompanied by the production of any required documentation establishing eligibility;

(9) A fee schedule; and

(10) Any other rules necessary to effectuate the provisions of this article.
§30-3E-9. Practice requirements.

(a) A physician assistant may not practice independent of a collaborating physician.

(b) A physician assistant may practice in a hospital in collaboration with physicians after filing a practice notification with the appropriate board.

(c) Except as set forth in subsection (b) of this section, before a licensed physician assistant may practice and before a collaborating physician may delegate medical acts to a physician assistant, the collaborating physician, and the physician assistant shall:

(1) File a practice agreement with the appropriate licensing board, including any designated alternate collaborating physicians;

(2) Pay the applicable fees; and

(3) Receive written authorization from the appropriate licensing board to commence practicing as a physician assistant pursuant to the practice agreement.

(d) A physician applying to collaborate with a physician assistant shall affirm that:

(1) The medical services set forth in the practice agreement are consistent with the skills and training of the collaborating physician and the physician assistant; and

(2) The activities delegated to a physician assistant are consistent with sound medical practice and will protect the health and safety of the patient.
(e) A collaborating physician may enter into practice agreements with up to five full-time physician assistants at any one time.

(f) A physician may collaborate with physician assistants in a hospital as approved by the hospital.

§30-3E-10a. Practice notification requirements.

(a) A physician assistant shall collaborate with physicians in a hospital only after the physician assistant is notified by the appropriate licensing board that a complete practice notification has been filed with the board.

(b) The licensing boards shall promulgate emergency rules to establish the content and criteria for submission of practice notifications for physician assistant hospital practice.

(c) A physician assistant shall notify the board, in writing, within 10 days of the termination of a practice notification. Failure to provide timely notice of the termination constitutes unprofessional conduct and disciplinary proceedings may be instituted by the appropriate licensing board.


(a) A licensed physician or podiatrist may collaborate with a physician assistant:

(1) As a collaborating physician in accordance with an authorized practice agreement;

(2) As an alternate collaborating physician who:

(A) Collaborates in accordance with an authorized practice agreement;

(B) Has been designated an alternate collaborating physician in the authorized practice agreement; and
(C) Only delegates those medical acts that have been authorized by the practice agreement and are within the scope of practice of both the primary collaborating physician and the alternate collaborating physician; or

(3) In a hospital pursuant to a practice notification.

(b) A collaborating physician shall observe, direct, and evaluate the physician assistant’s work records and practices, including collaborating with the physician assistant in the care and treatment of a patient in a health care facility.

(c) A health care facility is only legally responsible for the actions or omissions of a physician assistant when the physician assistant is employed by or on behalf of the facility.

(d) Every licensed physician assistant shall be individually responsible and liable for the care they provide. This article does not relieve physician assistants or collaborating physicians of responsibility and liability which otherwise may exist for acts and omissions occurring during collaboration.

§30-3E-12. Scope of practice.

(a) A license issued to a physician assistant by the appropriate state licensing board shall authorize the physician assistant to perform medical acts:

(1) Pursuant to a practice notification or delegated to the physician assistant as part of an authorized practice agreement;

(2) Appropriate to the education, training, and experience of the physician assistant;

(3) Customary to the practice of the collaborating physician; and
(4) Consistent with the laws of this state and rules of the boards.

(b) This article does not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists, or pharmacists, or certified as nurse anesthetists.

§30-3E-13. Identification.

(a) While practicing, a physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(b) A physician assistant shall keep his or her license and current practice agreement or practice notification available for inspection at his or her place of practice.

CHAPTER 192

(H. B. 2209 - By Delegates Howell, Shott and Foster)

[Passed March 8, 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 §30-24-8, relating to allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. QUALIFICATION OF ARMED FORCES HEALTH TECHNICIANS FOR CIVILIAN HEALTH OCCUPATIONS.
§30-24-8. Qualification for examination for license as an emergency medical technician.

Any person who has served on reserve or active duty in the medical corps of any of the Armed Forces of the United States and who has successfully completed the course of instruction required to qualify him or her for rating as an emergency medical technician, hospital corpsman, combat medic, health care specialist, or other equivalent rating in his or her particular branch of the Armed Forces, and whose service in the Armed Forces was under honorable conditions, may submit to the West Virginia Office of Emergency Medical Services, a photostatic copy of the certificate issued to him or her certifying successful completion of such course of instruction, a photostatic copy of his or her discharge from the Armed Forces, an application for a certification as an emergency medical technician, and the prescribed license fee.

If the certificate and discharge, as evidenced by the photostatic copies thereof, the application, and prescribed license fee are in order, and if the veteran meets all of the requirements of §16-4C-1 et seq. of this code, the veteran shall be permitted to take the same examination or examinations as are required under §16-4C-1 et seq. of this code for applicants who do not apply for a license under the provisions of this article: Provided, That the veteran may be required to attend additional training courses prior to taking the examination if more than 30 years has passed from his or her successful completion of the course of instruction and date of application. If the veteran passes the examination or examinations, he or she shall be licensed as an emergency medical technician and shall thereafter be subject to all of the provisions of §16-4C-1 et seq. of this code. If the veteran does not pass such examination or examinations, any provisions of §16-4C-1 et seq. of this code relating to reexaminations shall apply to the veteran the same as they apply to a person who does not apply for a license under the provisions of this article.
CHAPTER 193


[Passed February 11, 2019; in effect ninety days from passage.] [Approved by the Governor on February 19, 2019.]

AN ACT to amend and reenact §30-27-9 of the Code of West Virginia, 1931, as amended, relating to barbering and cosmetology; removing certain requirements to take an examination for a license; to establish a provisional license to practice in this state by an applicant with an expired license from another state; and directing the board to set the applicable fees for a provisional license.

Be it enacted by the Legislature of West Virginia:

§30-27-9. Professional license from another state; license to practice in this state; provisional license to practice in this state.

(a) The board shall issue a professional license to practice to an applicant of good moral character who holds a valid license or other authorization to practice in that particular field from another state, if the applicant demonstrates that he or she:

1. (1) Holds a valid license or other authorization to practice in another state which was granted after completion of educational requirements required in another state;

2. (2) Does not have charges pending against his or her valid license or other authorization to practice and has never had a valid license or other authorization to practice revoked;
(3) Has paid the applicable fee;

(4) Is at least 18 years of age;

(5) Has a high school diploma, a GED, or has passed the “ability to benefit test” approved by the United States Department of Education;

(6) Is a citizen of the United States or is eligible for employment in the United States;

(7) Has presented a certificate of health issued by a licensed physician; and

(8) Has fulfilled any other requirement specified by the board.

(b) The board shall award an applicant holding an expired license from another state a provisional license to practice in this state: Provided, That applicant does not have charges pending against his or her expired license or other authorization to practice and has never had a license revoked or other authorization to practice revoked. The provisional license will become a full license after the applicant:

(1) Has worked for one year under the supervision of someone with a valid license in this state;

(2) Does not have any complaints filed against him or her during the year the applicant holds a provisional license;

(3) Has paid all applicable fees for a provisional license and valid license;

(4) Is at least 18 years of age;

(5) Has a high school diploma, a GED, or has passed the “ability to benefit test” approved by the United States Department of Education;
(6) Is a citizen of the United States or is eligible for employment in the United States;

(7) Has presented a certificate of health issued by a licensed physician; and

(8) Has fulfilled any other requirement specified by the board.

The board may determine the applicable fees for a provisional license: Provided, That the cost shall not exceed one-half the cost of a full license.

CHAPTER 194

(Com. Sub. for H. B. 2324 - By Delegates Summers and Pushkin)

[Passed February 21, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2019.]
(a) Unless the context in which used clearly requires a different meaning, as used in this article:

1. “Acupuncture” means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points.

2. “Auricular acudetox” means auricular detoxification therapy, as approved by the board or as stipulated by the National Acupuncture Detoxification Association (NADA) for the treatment of substance abuse, alcoholism, chemical dependency, detoxification, behavioral therapy, or trauma recovery.

3. “Board” means the West Virginia Acupuncture Board.

4. “Certificate holder” means an authorization issued by the board to persons trained in auricular acudetox who meet the qualifications, established pursuant to this article and by board rules, to be certified as an auricular detoxification specialist (ADS).

5. “License” means a license issued by the board to practice acupuncture.

6. “Moxibustion” means the burning of mugwort on or near the skin to stimulate the acupuncture point.


8. “NADA protocol” means the National Acupuncture Detoxification Association protocol for auricular detoxification therapy.

9. “Practice acupuncture” means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.
(b) (1) “Practice acupuncture” includes:

(A) Stimulation of points of the body by the insertion of acupuncture needles;

(B) The application of moxibustion; and

(C) Manual, mechanical, thermal, or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

§30-36-7. Rule-making authority; miscellaneous powers and duties.

(a) The board may propose for promulgation legislative rules to carry out the provisions of this article in accordance with the provisions of §29A-3-1 et seq. of this code.

(b) The board may adopt a code of ethics for licensure.

(c) In addition to the powers set forth elsewhere in this article, the board shall keep:

(1) Records and minutes necessary for the orderly conduct of business; and

(2) A list of each currently licensed acupuncturist.

(d) The board may propose emergency legislative rules upon the effective date of the reenactment of this article during the 2019 regular session of the Legislature to effectuate the provisions necessary to issue certificates to persons trained in auricular acudetox, and to establish fees for certificate holders pursuant to this article.

§30-36-9. License or certificate required; exemptions.

(a) Except as otherwise provided in this article, an individual shall be licensed or certified by the board before he or she may practice acupuncture or auricular acudetox in this state.
(b) This section does not apply to:

(1) An individual employed by the federal government as an acupuncturist while practicing within the scope of that employment; or

(2) A student, trainee, or visiting teacher who is designated as a student, trainee, or visiting teacher while participating in a course of study or training under the supervision of a licensed acupuncturist in a program that is approved by the board or the State Board of Education.

§30-36-10. Qualifications of applicants for licensure; and qualifications for certificate holders.

(a) To qualify for a license, an applicant shall:

(1) Be of good moral character;

(2) Be at least 18 years of age;

(3) Demonstrate competence in performing acupuncture by meeting one of the following standards for education, training, or demonstrated experience:

(A) Graduation from a course of training of at least 1,800 hours, including 300 clinical hours, that is:

(i) Approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine; or

(ii) Found by the board to be equivalent to a course approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine;

(B) Achievement of a passing score on an examination that is:

(i) Given by the national commission for the certification of acupuncturists; or
(ii) Determined by the board to be equivalent to the examination given by the national commission for the certification of acupuncturists;

(C) Successful completion of an apprenticeship consisting of at least 2,700 hours within a five-year period under the direction of an individual properly approved by that jurisdiction to perform acupuncture; or

(D) Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior to application that consisted of at least 500 patient visits per year; and

(4) Achievement of any other qualifications that the board establishes in rules.

(b) Notwithstanding any other provisions of this code to the contrary, to qualify for a certificate as an auricular detoxification specialist, an applicant shall:

(1) Be at least 18 years old;

(2) Be authorized in this state to engage in any of the following:

(A) Physician assistant, pursuant to §30-3E-1 et seq. of this code;

(B) Dentist, pursuant to §30-4-1 et seq. of this code;

(C) Registered professional nurse, pursuant to §30-7-1 et seq. of this code;

(D) Practical nurse, pursuant to §30-7A-1 et seq. of this code;

(E) Psychologist, pursuant to §30-21-1 et seq. of this code;
(F) Occupational therapist, pursuant to §30-28-1 et seq. of this code;  
(G) Social worker, pursuant to §30-30-1 et seq. of this code;  
(H) Professional counselor, pursuant to §30-31-1 et seq. of this code;  
(I) Emergency medical services provider, pursuant to §16-4C-1 et seq. of this code; or  
(J) Corrections medical providers, pursuant to §15A-1-1 et seq. of this code.  
(3) Provide evidence of successful completion of a board-approved auricular acudetox program;  
(4) Submit a completed application as prescribed by the board; and  
(5) Submit the appropriate fees as provided for by legislative rule.  

(c) A certificate may be issued to a retired or inactive professional as described in §30-36-10(b) of this code: Provided, That the professional meets the qualifications for a certificate holder and the last three years of professional activity were performed in good standing: Provided, however, That a person who holds a certificate or its equivalent in another jurisdiction as an auricular detoxification specialist may be approved by the board to practice auricular acudetox during a public health emergency or state of emergency for a duration to be provided for in legislative rules of the board.

§30-36-14. Term and renewal of licenses and certificates; restrictions; and advertisements.

(a) Terms of license and certificate:
(1) The board shall provide for the term and renewal of licenses and certificates under this section;

(2) The term of a license or certificate may not be more than three years;

(3) A license or a certificate expires at the end of its term, unless the license or certificate is renewed for a term as provided by the board.

(b) Renewal notice. At least one month before the license or certificate expires, the board shall send to the licensee or certificate holder, by first-class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license or certificate expires;

(2) The date by which the renewal application must be received by the board for the renewal to be issued and mailed before the license or certificate expires; and

(3) The amount of the renewal fee.

(c) Applications for renewal. Before the license or certificate expires, the licensee or certificate holder periodically may renew it for an additional term, if the licensee or certificate holder:

(1) Otherwise is entitled to be licensed or certified;

(2) Pays to the board a renewal fee set by the board; and

(3) Submits to the board:

(A) A renewal application on the form that the board requires; and

(B) Satisfactory evidence of compliance with any continuing education requirements set under this section for license or certificate renewal.
(d) In addition to any other qualifications and requirements established by the board, the board may establish continuing education requirements as a condition to the renewal of licenses and certificates under this section.

(e) The board shall renew the license of and issue a renewal certificate to each licensee and certificate holder who meets the requirements of this section.

(f) A licensee may advertise only as permitted by rules adopted by the board.

(g) A certificate holder recognized as an auricular detoxification specialist is prohibited from needling any acupuncture body points beyond the scope of auricular acudetox, and may not advertise themselves as an acupuncturist: Provided, That nothing contained in this section prohibits a person from practicing within his or her scope of practice as authorized by law.

§30-36-17. Surrender of license by licensee or certificate by certificate holder.

(a) Unless the board agrees to accept the surrender of a license or certificate, a licensee or certificate holder may not surrender the license or certificate nor may the license or certificate lapse by operation of law while the licensee or certificate holder is under investigation or while charges are pending against the licensee or certificate holder.

(b) The board may set conditions on its agreement with the licensee or certificate holder under investigation or against whom charges are pending to accept surrender of the license or certificate.

§30-36-18. Reprimands, probations, suspensions and revocations; grounds.

The board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee or certificate holder, place any licensee or certificate holder on
probation, or suspend or revoke a license or certificate if the licensee or certificate holder:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or certificate for the applicant or licensee or certificate holder or for another;

(2) Fraudulently or deceptively:

(A) Uses a license or certificate; or

(B) Solicits or advertises.

(3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture or auricular acudetox;

(4) Is professionally, physically, or mentally incompetent;

(5) Provides professional services while:

(A) Under the influence of alcohol; or

(B) Using any narcotic or controlled substance, as defined in §60A-1-101 of this code, or other drug that is in excess of therapeutic amounts or without a valid medical indication;

(6) Knowingly violates any provision of this article or any rule of the board adopted under this article;

(7) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(8) Practices acupuncture or auricular detoxification therapy with an unauthorized person or assists an unauthorized person in the practice of acupuncture or auricular detoxification therapy;
(9) Is disciplined by the licensing or disciplinary authority of this state or any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;

(10) Willfully makes or files a false report or record in the practice of acupuncture or auricular detoxification therapy;

(11) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;

(12) Submits a false statement to collect a fee; or

(13) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the person is licensed and qualified to render because the individual is HIV positive, in conformity with standards established for treatment by physicians, dentists and other licensed health care professionals in cases of this nature.

CHAPTER 195


[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 §30-5-35 and §30-5-36, all relating to pharmacist dispensing of drugs;
permitting a pharmacist to dispense an amount equal to the prescription limit; permitting a pharmacist to provide an equal amount of drugs based upon dosage; and permitting a pharmacist to refill a prescription in an emergency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-35. Conversion of prescriptions authorizing refills.

(a) If a prescription authorizes a drug to be dispensed by refilling the prescription one or more times and the total quantity of the drug does not exceed a 90-day supply of the drug, a pharmacist who is filling or refilling the prescription may dispense a quantity of the drug that varies from the quantity or amount of the drug originally written on the prescription, if all of these conditions are met:

(1) The action taken by the pharmacist does not result in a quantity or amount of the drug being dispensed that exceeds the total quantity that may be dispensed by filling and refilling the prescription.

(2) The prescription is for one of the following:

   (A) A maintenance drug to be taken on a regular, recurring basis to treat a chronic condition;

   (B) A drug to be taken on a regular, recurring basis to prevent disease; or

   (C) A contraceptive.

(3) If the prescription is for a maintenance drug, the patient has used an initial 30-day supply of the drug, or a 90-day supply of the drug has previously been prescribed to the patient, and the pharmacist determines, after consulting with the patient, that the drug has stabilized the patient’s condition.
(4) The prescription is not for a controlled substance, as set forth in §60A-1-1 et seq.; and

(5) The pharmacist consults with the patient, and the pharmacist determines the action authorized by this section is appropriate for the patient.

(b) When a licensed practitioner authorizes a drug to be dispensed in a certain dosage, and the pharmacist is unable to dispense the drug in the same dosage as specified, the pharmacist may substitute the same drug in a different dosage, if the aggregate dosage of the prescription remains the same and the following conditions are met:

(1) The pharmacist counsels the patient on the differences; and

(2) The pharmacist notifies the patient’s prescriber of the drug product substitution within five business days of the substitution.

(c) This section does not require a health care insurer, government health care program, pharmacy benefit manager, or other entity that offers health benefit plans to provide coverage for a drug in a manner that is inconsistent with the patient’s benefit plan.

§30-5-36. Emergency prescriptions for life-sustaining medication

(a) A pharmacist may distribute or sell a dangerous drug, other than a schedule II-controlled substance as defined in §60A-2-206, without a written or oral prescription from a licensed health professional authorized to prescribe drugs if all the following conditions are met:

(1) The pharmacy at which the pharmacist works has a record of a prescription for the drug in the name of the patient who is requesting it, but the prescription does not provide for a refill or the time permitted by the rules adopted
by the state board of pharmacy for providing refills has elapsed;

(2) The pharmacist is unable to obtain authorization to refill the prescription from a health care professional who issued the prescription or another health professional responsible for the patient’s care;

(3) In the exercise of the pharmacist’s professional judgment:

(A) The drug is essential to sustain the life of the patient or continue therapy for a chronic condition of the patient.

(B) Failure to dispense or sell the drug to the patient could result in harm to the health of the patient.

(4) Except as provided in this section, the amount of the drug that is dispensed or sold under this section does not exceed a seventy-two-hour supply as provided in the prescription; and

(5) If the drug sold or dispensed under this section is not a controlled substance and the patient has been on a consistent drug therapy as demonstrated by records maintained by a pharmacy, the amount of the drug dispensed or sold does not exceed a thirty-day supply as provided in the prescription or, if the standard unit of dispensing for the drug exceeds a thirty-day supply, the amount of the drug dispensed or sold does not exceed the standard unit of dispensing. A pharmacist shall not dispense or sell a particular drug to the same patient in an amount described in this section more than once in any twelve-month period.

(b) A Pharmacist who dispenses or sells a drug under this section shall:

(1) For one year after the date of dispensing or sale, maintain a record in accordance with this chapter of the drug dispensed or sold, including the name and address of the
patient and the individual receiving the drug, if the individual receiving the drug is not the patient, the amount dispensed or sold, and the original prescription number;

(2) Notify the health professional who issued the initial prescription or another health professional responsible for the patient’s care not later than seventy-two hours after the drug is sold or dispensed; and within seven days after authorizing an emergency oral prescription, the practitioner has a written prescription for the emergency quantity prescribed delivered to the dispensing pharmacist. The prescription shall have written on its face “Authorization for Emergency Dispensing” and the date of the orally or electronically transmitted prescription. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the seven-day period. Upon receipt, the dispensing pharmacist shall attach this written prescription to the emergency oral prescription which had earlier been reduced to writing or to the hard copy of the electronically transmitted prescription. The pharmacist shall notify the nearest office of the U.S. Drug Enforcement Administration if the prescribing practitioner fails to deliver a written prescription.

(3) If applicable, obtain authorization for additional dispensing from one of the health professionals in division (A) (1) of this section.

(4) A pharmacist who dispenses or sells a drug under this section may do so once for each prescription described here.
CHAPTER 196


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

AN ACT to amend and reenact §30-5-11 and §30-5-12 of the Code of West Virginia, 1931, as amended, all relating to establishing different classes of pharmacy technicians; establishing an application process for a registered pharmacy technician to obtain an endorsement as a pharmacy technician; establishing an application process for a nuclear pharmacy technician endorsement; expanding the scope of practice for a registered pharmacy technician endorsement; and defining the scope of practice for a nuclear pharmacy technician endorsement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-11. Registration of pharmacy technicians.

(a) To be eligible for registration as a pharmacy technician to assist in the practice of pharmacist care, the applicant shall:

(1) Submit a written application to the board;

(2) Pay the applicable fees;

(3) Have graduated from high school or obtained a Certificate of General Educational Development (GED) or equivalent.
(4) Have:

(A) Graduated from a competency-based pharmacy technician education and training program as approved by legislative rule of the board;

(B) Completed a pharmacy-provided, competency-based education and training program approved by the board; or

(C) Obtained a national certification as a pharmacy technician and have practiced in another jurisdiction for a period of time as determined by the board.

(5) Have successfully passed an examination developed using nationally recognized and validated psychometric and pharmacy practice standards approved by the board;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license, which conviction remains unreversed;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted bearing a rational nexus to the practice of pharmacist care, which conviction remains unreversed; and

(9) Have fulfilled any other requirement specified by the board in rule.

(b) A person whose license to practice pharmacist care has been denied, revoked, suspended, or restricted for
disciplinary purposes in any jurisdiction is not eligible to be registered as a pharmacy technician.

(c) To be eligible to obtain a nuclear pharmacy technician endorsement, the applicant shall:

(1) Submit a written application to the board;

(2) Pay the applicable fees;

(3) Have graduated from high school or obtained a Certificate of General Educational Development (GED) or equivalent;

(4) Have successfully completed a pharmacy provided, competency-based nuclear pharmacy technician education and training program approved by the board;

(5) Have all applicable national certifications and comply with all federal rules and regulations;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license, which conviction remains unreversed;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted bearing a rational nexus to the practice of pharmacist care, which conviction remains unreversed; and

(9) Has fulfilled any other requirement specified by the board in any rule.
(d) A person whose license to practice pharmacist care has been denied, revoked, suspended, or restricted for disciplinary purposes in any jurisdiction is not eligible to be registered as a nuclear pharmacy technician.

§30-5-12. Scope practice for registered pharmacy technician.

(a) A registered pharmacy technician shall, under the direct supervision of the licensed pharmacist, perform at a minimum the following:

1. Assist in the dispensing process;

2. Receive new written or electronic prescription drug orders;

3. Compound;

4. Stock medications;

5. Complete a list of a patient’s current prescription and nonprescription medications to provide for medication reconciliation;

6. Supervise registered pharmacy technicians and pharmacy technician trainees;

7. Medical records screening; and

8. Perform pharmacy technician product verification, where no clinical judgment is necessary and the pharmacist makes the final verification; if the registered pharmacy technician furnishes to the Board an affidavit signed and dated by the supervising pharmacist-in-charge of the facility which will employee the applicant attesting to the applicant’s competency in the advanced areas of practice that he or she will practice; and has either:

(A) Worked as a full-time registered pharmacy technician holding a pharmacy technician endorsement in West Virginia for at least the previous two years; or
(B) Worked as a full-time registered pharmacy technician holding a pharmacy technician license in good standing in another jurisdiction for at least the previous two years.

(b) A registered pharmacy technician may perform the following under indirect supervision of a licensed pharmacist:

(1) Process medical coverage claims; and

(2) Cashier.

(c) A registered pharmacy technician may not perform the following:

(1) Drug regimen review;

(2) Clinical conflict resolution;

(3) Contact a prescriber concerning prescription drug order clarification or therapy modification;

(4) Patient counseling;

(5) Dispense process validation;

(6) Prescription transfer;

(7) Receive new oral prescription drug orders;

(8) An act within the practice of pharmacist care that involves discretion or independent professional judgment; or

(9) A function which the registrant has not been trained and the function has not been specified in a written protocol with competency established.

(d) Indirect supervision of a registered pharmacy technician is permitted to allow a pharmacist to take one break of no more than 30 minutes during any contiguous
eight-hour period. The pharmacist may leave the pharmacy area but may not leave the building during the break. When a pharmacist is on break, a pharmacy technician may continue to prepare prescriptions for the pharmacist’s verification. A prescription may not be delivered until the pharmacist has verified the accuracy of the prescription, and counseling, if required, has been provided to or refused by the patient.

(e) A pharmacy that permits indirect supervision of a pharmacy technician during a pharmacist’s break shall have either an interactive voice response system or a voice mail system installed on the pharmacy phone line in order to receive new prescription orders and refill authorizations during the break.

(f) The pharmacy shall establish protocols that require a registered pharmacy technician to interrupt the pharmacist’s break if an emergency arises.

(g) A registered pharmacy technician who has obtained a nuclear pharmacy technician endorsement, may under the direct supervision of the licensed nuclear pharmacist, perform the following:

1. Assist in the dispensing process;
2. Receive new written or electronic prescription drug orders;
3. Mix compound ingredients for liquid products, suspensions, ointments, mixes, or blend for tablet granulations and capsule powders;
4. Prepare radiopharmaceuticals;
5. Record keeping;
6. File and organize prescriptions;
7. Create reports;
(8) Inventory tasks;

(9) Handle raw materials and intermediate or finished products;

(10) Perform general maintenance as required on pumps, homogenizers, filter presses, tablet compression machines, and other like machines;

(11) Perform standard operating procedures to meet current good manufacturing practices (GMP);

(12) Maintain records;

(13) Monitor and verify quality in accordance with statistical process or other control procedures; and

(14) Stock medications.

(h) A registered pharmacy technician who has obtained a nuclear pharmacy technician endorsement may not perform the following:

(1) Drug regimen review;

(2) Clinical conflict resolution;

(3) Contact a prescriber concerning prescription drug order clarification or therapy modification;

(4) Receive new oral prescription drug orders.
AN ACT to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-12d of said code, all relating to telemedicine prescription practice requirements; providing exceptions; allowing for physician submitted Schedule II telemedicine prescriptions for immediate administration in a hospital.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rulemaking.

(a) Definitions. – For the purposes of this section:

(1) “Chronic nonmalignant pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. “Chronic nonmalignant pain” does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.
(2) “Physician” means a person licensed by the West Virginia Board of Medicine to practice allopathic medicine in West Virginia.

(3) “Store and forward telemedicine” means the asynchronous computer-based communication of medical data or images from an originating location to a physician or podiatrist at another site for the purpose of diagnostic or therapeutic assistance.

(4) “Telemedicine” means the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication, or other means of interaction between a physician or podiatrist in one location and a patient in another location, with or without an intervening health care provider.

(5) “Telemedicine technologies” means technologies and devices which enable secure electronic communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring or store and forward digital image technology to provide or support health care delivery by replicating the interaction of a traditional in-person encounter between a physician or podiatrist and a patient.

(b) *Licensure.* –

(1) The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used.

(2) A physician or podiatrist who practices telemedicine must be licensed as provided in this article.

(3) This section does not apply to:

(A) An informal consultation or second opinion, at the request of a physician or podiatrist who is licensed to practice medicine or podiatry in this state, provided that the
physician or podiatrist requesting the opinion retains authority and responsibility for the patient’s care; and

(B) Furnishing of medical assistance by a physician or podiatrist in case of an emergency or disaster, if no charge is made for the medical assistance.

(c) Physician-patient or Podiatrist-patient relationship through telemedicine encounter. –

(1) A physician-patient or podiatrist-patient relationship may not be established through:

(A) Audio-only communication;

(B) Text-based communications such as e-mail, Internet questionnaires, text-based messaging or other written forms of communication; or

(C) Any combination thereof.

(2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient or podiatrist-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing or similar secure video services during the initial physician-patient or podiatrist-patient encounter; or

(B) For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies.

(3) Once a physician-patient or podiatrist-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of
this subsection, the physician or podiatrist may utilize any
telemicine technology that meets the standard of care and
is appropriate for the patient presentation.

(d) **Telemedicine practice.** –

A physician or podiatrist using telemedicine
technologies to practice medicine or podiatry shall:

1. Verify the identity and location of the patient;
2. Provide the patient with confirmation of the identity
   and qualifications of the physician or podiatrist;
3. Provide the patient with the physical location and
   contact information of the physician;
4. Establish or maintain a physician-patient or
   podiatrist-patient relationship that conforms to the standard
   of care;
5. Determine whether telemedicine technologies are
   appropriate for the patient presentation for which the
   practice of medicine or podiatry is to be rendered;
6. Obtain from the patient appropriate consent for the
   use of telemedicine technologies;
7. Conduct all appropriate evaluations and history of
   the patient consistent with traditional standards of care for
   the patient presentation;
8. Create and maintain health care records for the
   patient which justify the course of treatment and which
   verify compliance with the requirements of this section; and
9. The requirements of subdivisions (1) through (8),
inclusive, of this subsection do not apply to the practice of
pathology or radiology medicine through store and forward
telemicine.

(e) **Standard of care.** –
The practice of medicine or podiatry provided via telemedicine technologies, including the establishment of a physician-patient or podiatrist-patient relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard of care, professional practice requirements and scope of practice limitations as traditional in-person physician-patient or podiatrist-patient encounters. Treatment, including issuing a prescription, based solely on an online questionnaire, does not constitute an acceptable standard of care.

(f) Patient records. –

The patient record established during the use of telemedicine technologies shall be accessible and documented for both the physician or podiatrist and the patient, consistent with the laws and legislative rules governing patient health care records. All laws governing the confidentiality of health care information and governing patient access to medical records shall apply to records of practice of medicine or podiatry provided through telemedicine technologies. A physician or podiatrist solely providing services using telemedicine technologies shall make documentation of the encounter easily available to the patient, and subject to the patient’s consent, to any identified care provider of the patient.

(g) Prescribing limitations. –

(1) A physician or podiatrist who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act.

(2) The prescribing limitations in this subsection do not apply when a physician is providing treatment to patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and
are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry or the American Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the continued need of treatment.

(3) The prescribing limitations in this subsection do not apply to a hospital, excluding the emergency department, when a physician submits an order to dispense a controlled substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient for immediate administration in a hospital.

(4) A physician or podiatrist may not prescribe any pain-relieving controlled substance listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

(5) A physician or health care provider may not prescribe any drug with the intent of causing an abortion. The term “abortion” has the same meaning ascribed to it in §16-2F-2 of this code.

(h) Exceptions. –

This article does not prohibit the use of audio-only or text-based communications by a physician or podiatrist who is:

(1) Responding to a call for patients with whom a physician-patient or podiatrist-patient relationship has been established through an in-person encounter by the physician or podiatrist;

(2) Providing cross coverage for a physician or podiatrist who has established a physician-patient or
(3) Providing medical assistance in the event of an emergency.

(i) Rulemaking. –

The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with §29A-3-1 et seq., of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine and podiatry in this state.

(j) Preserving traditional physician-patient or podiatrist-patient relationship. –

Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship. This section does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rulemaking.

(a) Definitions. – For the purposes of this section:

(1) “Chronic nonmalignant pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. “Chronic nonmalignant pain” does not
include pain associated with a terminal condition or illness
or with a progressive disease that, in the normal course of
progression, may reasonably be expected to result in a
terminal condition or illness.

(2) “Physician” means a person licensed by the West
Virginia Board of Osteopathic Medicine to practice
osteopathic medicine in West Virginia.

(3) “Store and forward telemedicine” means the
asynchronous computer-based communication of medical
data or images from an originating location to a physician at
another site for the purpose of diagnostic or therapeutic
assistance.

(4) “Telemedicine” means the practice of medicine
using tools such as electronic communication, information
technology, store and forward telecommunication or other
means of interaction between a physician in one location
and a patient in another location, with or without an
intervening health care provider.

(5) “Telemedicine technologies” means technologies
and devices which enable secure electronic communications
and information exchange in the practice of telemedicine,
and typically involve the application of secure real-time
audio/video conferencing or similar secure video services,
remote monitoring or store and forward digital image
technology to provide or support health care delivery by
replicating the interaction of a traditional in-person
encounter between a physician and a patient.

(b) Licensure. –

(1) The practice of medicine occurs where the patient is
located at the time the telemedicine technologies are used.

(2) A physician who practices telemedicine must be
licensed as provided in this article.

(3) This section does not apply to:
(A) An informal consultation or second opinion, at the request of a physician who is licensed to practice medicine in this state, provided that the physician requesting the opinion retains authority and responsibility for the patient’s care; and

(B) Furnishing of medical assistance by a physician in case of an emergency or disaster if no charge is made for the medical assistance.

(c) **Physician-patient relationship through telemedicine encounter.** –

(1) A physician-patient relationship may not be established through:

(A) Audio-only communication;

(B) Text-based communications such as e-mail, Internet questionnaires, text-based messaging or other written forms of communication; or

(C) Any combination thereof.

(2) If an existing physician-patient relationship is not present prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing or similar secure video services during the initial physician-patient encounter; or

(B) For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies.
(3) Once a physician-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of this subsection, the physician may utilize any telemedicine technology that meets the standard of care and is appropriate for the patient presentation.

(d) **Telemedicine practice.** – A physician using telemedicine technologies to practice medicine shall:

(1) Verify the identity and location of the patient;

(2) Provide the patient with confirmation of the identity and qualifications of the physician;

(3) Provide the patient with the physical location and contact information of the physician;

(4) Establish or maintain a physician-patient relationship which conforms to the standard of care;

(5) Determine whether telemedicine technologies are appropriate for the patient presentation for which the practice of medicine is to be rendered;

(6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

(7) Conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the patient presentation;

(8) Create and maintain health care records for the patient which justify the course of treatment and which verify compliance with the requirements of this section; and

(9) The requirements of subdivisions (1) through (7), inclusive, of this subsection do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) **Standard of care.** –
The practice of medicine provided via telemedicine technologies, including the establishment of a physician-patient relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard of care, professional practice requirements and scope of practice limitations as traditional in-person physician-patient encounters. Treatment, including issuing a prescription, based solely on an online questionnaire does not constitute an acceptable standard of care.

(f) Patient records. –

The patient record established during the use of telemedicine technologies shall be accessible and documented for both the physician and the patient, consistent with the laws and legislative rules governing patient health care records. All laws governing the confidentiality of health care information and governing patient access to medical records shall apply to records of practice of medicine provided through telemedicine technologies. A physician solely providing services using telemedicine technologies shall make documentation of the encounter easily available to the patient, and subject to the patient’s consent, to any identified care provider of the patient.

(g) Prescribing limitations. –

(1) A physician or podiatrist who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act.

(2) The prescribing limitations in this subsection do not apply when a physician is providing treatment to patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit
Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry or the American Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the continued need of treatment.

(3) The prescribing limitations in this subsection do not apply to a hospital, excluding the emergency department, when a physician submits an order to dispense a controlled substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient for immediate administration in a hospital.

(4) A physician or podiatrist may not prescribe any pain-relieving controlled substance listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

(5) A physician or health care provider may not prescribe any drug with the intent of causing an abortion. The term “abortion” has the same meaning ascribed to it in §16-2F-2 of this code.

(h) Exceptions. –

This section does not prohibit the use of audio-only or text-based communications by a physician who is:

(1) Responding to a call for patients with whom a physician-patient relationship has been established through an in-person encounter by the physician;

(2) Providing cross coverage for a physician who has established a physician-patient or relationship with the patient through an in-person encounter; or

(3) Providing medical assistance in the event of an emergency.
(i) Rulemaking. –

The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with §29A-3-1 et seq., of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine in this state.

(j) Preservation of the traditional physician-patient relationship. –

Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient relationship. This section does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

CHAPTER 198

(Com. Sub. for S. B. 539 - By Senators Mann, Baldwin, Facemire, Ihlenfeld, Jeffries, Maroney, Romano, Rucker, Stollings, Takubo, Weld, Woelfel, Unger, Hamilton, Hardesty, Beach, Prezioso, Plymale, Swope, Tarr, Cline and Lindsay)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §5-10D-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §15-2A-6 of said code, all relating to the West Virginia State Police Retirement System; increasing accrued benefit of
.retirees in the West Virginia State Police Retirement System on a certain date; and adding a member to the Consolidated Public Retirement Board who is a member, annuitant, or retirant of the West Virginia State Police Retirement System.

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-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

(a) The Consolidated Public Retirement Board is continued to administer all public retirement plans in this state. It shall administer the Public Employees Retirement System established in §5-10-1 et seq. of this code; the Teachers Retirement System established in §18-7A-1 et seq. of this code; the Teachers’ Defined Contribution Retirement System created by §18-7B-1 et seq. of this code; the West Virginia State Police Death, Disability, and Retirement Fund created by §15-2-1 et seq. of this code; the West Virginia State Police Retirement System created by §15-2A-1 et seq. of this code; the Deputy Sheriff Death, Disability, and Retirement Fund created by §7-14D-1 et seq. of this code; the Judges’ Retirement System created under §51-9-1 et seq. of this code; the Emergency Medical Services Retirement System established in §16-5V-1 et seq. of this code; and the Municipal Police Officers and Firefighters Retirement System established in §8-22A-1 et seq. of this code.

(b) The membership of the Consolidated Public Retirement Board consists of:
(1) The Governor or his or her designee;

(2) The State Treasurer or his or her designee;

(3) The State Auditor or his or her designee;

(4) The Secretary of the Department of Administration or his or her designee;

(5) Four residents of the state, who are not members, retirants, or beneficiaries of any of the public retirement systems, to be appointed by the Governor, with the advice and consent of the Senate; and

(6) A member, annuitant, or retirant of the Public Employees Retirement System who is or was a state employee; a member, annuitant, or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant, or retirant of the Teachers Retirement System; a member, annuitant, or retirant of the West Virginia State Police Death, Disability, and Retirement Fund; a member, annuitant, or retirant of the West Virginia State Police Retirement System; a member, annuitant, or retirant of the Deputy Sheriff Death, Disability, and Retirement Fund; a member, annuitant, or retirant of the Teachers’ Defined Contribution Retirement System; a member, annuitant, or retirant of the Emergency Medical Services Retirement System; and beginning as soon as practicable after January 1, 2010, one person who is a member, annuitant, or retirant of a municipal policemen’s or firemen’s pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System, all to be appointed by the Governor, with the advice and consent of the Senate. The Governor shall choose the member representing the municipal policemen’s or firemen’s pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System from two names submitted by the state’s largest organization of professional police officers and two names submitted by the state’s largest organization of professional
firefighters. Representation of the municipal police officers and firefighters shall alternate after each term on the board between persons having police officer and firefighter affiliation so that each professional group is represented on the board every other term.

All appointees to the board shall have recognized competence or significant experience in pension management or administration, actuarial analysis, institutional management, or accounting. Those members appointed prior to January 1, 2010, shall be considered to have met these qualifications. One trustee shall be an attorney experienced in finance and pension matters and one trustee shall be a certified public accountant. Each member of the board must complete annual fiduciary training and timely complete any conflict of interest forms required to serve as a trustee.

(c) The appointed members of the board shall serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the Governor, within 60 days, shall fill the vacancy by appointment for the unexpired term. No more than six appointees may be of the same political party.

(d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities, and liabilities of the Public Employees Retirement System established pursuant to §5-10-1 et seq. of this code; the Teachers Retirement System established pursuant to §18-7A-1 et seq. of this code; the Teachers’ Defined Contribution Retirement System established pursuant to §18-7B-1 et seq. of this code; the West Virginia State Police Death, Disability, and Retirement Fund created pursuant to §15-2-1 et seq. of this code; the West Virginia State Police Retirement System created by §15-2A-1 et seq. of this code; the Deputy Sheriff Death, Disability, and Retirement Fund created pursuant to §7-14D-1 et seq. of this code; the Judges’ Retirement
System created pursuant to §51-9-1 et seq. of this code; the Emergency Medical Services Retirement System established in §16-5V-1 et seq. of this code; and the Municipal Police Officers and Firefighters Retirement System created pursuant to §8-22A-1 et seq. of this code, and their appropriate governing boards.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with §29A-3-1 et seq. of this code, necessary to effectuate its powers, duties, and responsibilities: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) (1) The Consolidated Public Retirement Board shall continue to transfer all funds received for the benefit of the retirement systems, including, but not limited to, all employer and employee contributions, to the West Virginia Investment Management Board: Provided, That the employer and employee contributions of the Teachers’ Defined Contribution Retirement System, established in §18-7B-3 of this code, and voluntary deferred compensation funds invested by the West Virginia Consolidated Public Retirement Board pursuant to §5-10B-5 of this code may not be transferred to the West Virginia Investment Management Board.

(2) The board may recover from a participating employer that fails to pay any amount due a retirement system in a timely manner the contribution due and an additional amount not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the provisions of §29A-3-1 et seq. of this code. Any amounts recovered shall be administered in the same manner in which the amount due is required to be administered.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public
retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers’ Defined Contribution Retirement System and any other assets of the public retirement plans administered by the Consolidated Public Retirement Board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The board may employ the West Virginia Investment Management Board to provide investment management consulting services for the investment of funds in the Teachers’ Defined Contribution Retirement System.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.


(a) A member may retire with full benefits upon attaining the age of 50 and completing 25 or more years of service or attaining the age of 52 and completing 20 years or more of service by filing with the board his or her voluntary application in writing for retirement. A member who is less than age 52 may retire upon completing 20 years or more of service: Provided, That he or she will receive a reduced benefit that is of equal actuarial value to the benefit the member would have received if the member deferred commencement of his or her accrued retirement benefit to the age of 52.

(b) When the board retires a member with full benefits under the provisions of this section, the board, by order in writing, shall make a determination that the member is entitled to receive an annuity equal to two and three-fourths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service at the time of retirement: Provided, That beginning July 1,
2019, the member is entitled to receive an annuity equal to three percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service at the time of retirement: Provided, however, That the amendments to this subsection enacted during the regular session of the Legislature, 2019, apply to current retirants. Any annuity calculated pursuant to the provisions of this subsection are subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and §15-2A-6a of this code. The retirant’s annuity shall begin the first day of the calendar month following the month in which the member’s application for the annuity is filed with the board on or after his or her attaining age and service requirements and termination of employment.

(c) In no event may the provisions of §5-16-13 of this code be applied in determining eligibility to retire with either a deferred or immediate commencement of benefit.

CHAPTER 199

(S. B. 544 - By Senators Hamilton, Carmichael (Mr. President), Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel and Boso)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to increasing salaries for members of the West Virginia State Police.
Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VIII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on July 1, 2019, members shall receive annual salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS
| 28 | Cadet During Training | $38,524 |
| 29 | Cadet Trooper After Training | 45,784 |
| 30 | Trooper Second Year | 46,796 |
| 31 | Trooper Third Year | 47,179 |
| 32 | Senior Trooper | 47,578 |
| 33 | Trooper First Class | 48,184 |
| 34 | Corporal | 48,790 |
| 35 | Sergeant | 53,091 |
| 36 | First Sergeant | 55,242 |
| 37 | Second Lieutenant | 57,392 |
| 38 | First Lieutenant | 59,543 |
| 39 | Captain | 61,694 |
| 40 | Major | 63,844 |
| 41 | Lieutenant Colonel | 65,995 |

**ANNUAL SALARY SCHEDULE (BASE PAY)**

| 42 | ADMINISTRATION SUPPORT SPECIALIST |
| 43 | CLASSIFICATION |
| 45 | I | 46,796 |
| 46 | II | 47,578 |
| 47 | III | 48,184 |
| 48 | IV | 48,790 |
| 49 | V | 53,091 |
| 50 | VI | 55,242 |
Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in §15-652-5(e) of this code and supplemental pay as provided in §15-662-5(g) of this code.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in §15-2-5(d) of this code for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of $500 to be effective during his or her next year of service and a like
increase at yearly intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 et seq. of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the West Virginia State Police’s payroll officer the names of those members who have worked in excess of the standard
pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members’ participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.
AN ACT to amend and reenact §29-18-4a of the Code of West Virginia, 1931, as amended, relating to supervision of the West Virginia State Rail Authority by Secretary of the Department of Transportation pursuant to law; and removing range of amounts from which salary is set for executive director of authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4a. Supervision of West Virginia State Rail Authority; executive director’s compensation.

1 The West Virginia State Rail Authority is under the supervision of the Secretary of the Department of Transportation pursuant to the provisions of §5F-1-1 of this code. Notwithstanding any other provisions of this code to the contrary, the salary of the Executive Director of the State Rail Authority shall be set by the authority.
CHAPTER 201

(Com. Sub. for H. B. 2737 - By Delegates Householder and Criss)

[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 §11-1-1b, relating to providing training for State Tax Division employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. SUPERVISION.

§11-1-1b. Training of employees.

(a) To ensure adequate standards of public service, the commissioner may provide technical and specialized instruction for employees of the State Tax Division. If, upon review of the personnel records of any employee of the State Tax Division, the commissioner is of the opinion that it would be in the best interest of the State Tax Division to provide the employee with additional training or instruction in the field or vocation in which the employee is engaged, the commissioner may, upon approval of the secretary, request that the employee obtain the additional training or instruction at any place the commissioner considers suitable. The commissioner is further authorized to pay out of state funds, as may be available, any required tuition, materials or enrollment fees for additional training or instruction authorized pursuant to the provisions of this section.

(b) The commissioner is hereby authorized to promulgate rules in accordance with the provisions of
§29A-3-1 et seq. of this code setting forth at a minimum: (1) the types of training and degrees or certifications that may be obtained; (2) the employee classifications suitable for additional training; (3) the maximum amount that can be spent on any one employee’s training; and (4) other matters as deemed necessary to promote the development and retention of a skilled workforce.

CHAPTER 202

(H. B. 3083 - By Delegate Hanshaw (Mr. Speaker) and Delegate Miley)

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

AN ACT to amend and reenact §21A-1A-17 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation and adding temporary work by employees during the legislative session is excluded from the term employment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

The term “employment” does not include:

(1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment
compensation law, all of the provisions of this law are
applicable to the instrumentalities and to service performed
for the instrumentalities in the same manner, to the same
extent, and on the same terms as to all other employers,
employing units, individuals, and services: Provided, That
if this state is not certified for any year by the Secretary of
Labor under 26 U.S.C. § 3404, subsection (c), the payments
required of the instrumentalities with respect to the year
shall be refunded by the commissioner from the fund in the
same manner and within the same period as is provided in
§21A-5-19 of this code with respect to payments erroneously collected;

(2) Service performed with respect to which
unemployment compensation is payable under the Railroad
Unemployment Insurance Act and service with respect to
which unemployment benefits are payable under an
unemployment compensation system for maritime
employees established by an Act of Congress. The
Commissioner may enter into agreements with the proper
agency established under an Act of Congress to provide
reciprocal treatment to individuals who, after acquiring
potential rights to unemployment compensation under an
Act of Congress or who have, after acquiring potential
rights to unemployment compensation under an Act of
Congress, acquired rights to benefit under this chapter. Such
agreement shall become effective 10 days after the
publications which shall comply with the general rules of
the Department;

(3) Service performed by an individual in agricultural
labor, except as provided in §21A-1A-16(12) of this code,
the definition of “employment”. For purposes of this
subdivision, the term “agricultural labor” includes all
services performed:

(A) On a farm, in the employ of any person, in
connection with cultivating the soil, or in connection with
raising or harvesting any agricultural or horticultural
commodity, including the raising, shearing, feeding, caring
for, training and management of livestock, bees, poultry,
and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other
operator of a farm, in connection with the operation,
management, conservation, improvement, or maintenance
of the farm and its tools and equipment, or in salvaging
timber or clearing land of brush and other debris left by a
hurricane, if the major part of the service is performed on a
farm;

(C) In connection with the production or harvesting of
any commodity defined as an agricultural commodity in
section fifteen (g) of the Agricultural Marketing Act, as
amended, as codified in 12 U.S.C. § 1141j, subsection (g),
or in connection with the ginning of cotton, or in connection
with the operation or maintenance of ditches, canals,
reservoirs, or waterways, not owned or operated for profit,
used exclusively for supplying and storing water for
farming purposes;

(D) (i) In the employ of the operator of a farm in
handling, planting, drying, packing, packaging, processing,
freezing, grading, storing, or delivering to storage or to
market or to a carrier for transportation to market, in its
unmanufactured state, any agricultural or horticultural
commodity; but only if the operator produced more than one
half of the commodity with respect to which the service is
performed; or (ii) in the employ of a group of operators of
farms (or a cooperative organization of which the operators
are members) in the performance of service described in
subparagraph (i) of this paragraph, but only if the operators
produced more than one half of the commodity with respect
to which the service is performed; but the provisions of
subparagraphs (i) and (ii) of this paragraph are not
applicable with respect to service performed in connection
with commercial canning or commercial freezing or in
connection with any agricultural or horticultural commodity
after its delivery to a terminal market for distribution for
consumption;
(E) On a farm operated for profit if the service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges, and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(4) Domestic service in a private home except as provided in §21A-1A-16(13) of this code, the definition of “employment”;

(5) Service performed by an individual in the employ of his or her son, daughter, or spouse;

(6) Service performed by a child under the age of 18 years in the employ of his or her father or mother;

(7) Service as an officer or member of a crew of an American vessel, performed on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is without this state;

(8) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(9) Service performed: (A) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or (B) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order; or (C) by an individual...
receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market: Provided, That this exemption does not apply to services performed by individuals if they are not receiving rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

(10) Service performed in the employ of a school, college, or university, if the service is performed: (A) By a student who is enrolled and is regularly attending classes at the school, college, or university; or (B) by the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service, that: (i) The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university; and (ii) the employment will not be covered by any program of unemployment insurance;

(11) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the
employer, except that this subdivision does not apply to
service performed in a program established for or on behalf
of an employer or group of employers;

(12) Service performed in the employ of a hospital, if
the service is performed by a patient of the hospital, as
defined in this article;

(13) Service in the employ of a governmental entity
referred to in §21A-1A-16(9) of this code, the definition of
“employment”, if the service is performed by an individual
in the exercise of duties: (A) As an elected official; (B) as a
member of a legislative body, or a member of the judiciary,
of a state or political subdivision; (C) as an employee
serving on a temporary basis for the legislature during, or in
support of, the legislative session; (D) as a member of the
state National Guard or air National Guard, except as
provided in §21A-1A-28 of this code; (E) as an employee
serving on a temporary basis in case of fire, storm, snow,
earthquake, flood, or similar emergency; (F) in a position
which, under or pursuant to the laws of this state, is
designated as: (i) A major nontenured policymaking or
advisory position; or (ii) a policymaking or advisory
position the performance of the duties of which ordinarily
does not require more than eight hours per week; or (G) as
any election official appointed to serve during any
municipal, county, or state election, if the amount of
remuneration received by the individual during the calendar
year for services as an election official is less than $1,000;

(14) Service performed by a bona fide partner of a
partnership for the partnership; and

(15) Service performed by a person for his or her own
sole proprietorship.

Notwithstanding the foregoing exclusions from the
definition of “employment”, services, except agricultural
labor and domestic service in a private home, are in
employment if with respect to the services a tax is required
to be paid under any federal law imposing a tax against
which credit may be taken for contributions required to be
paid into a State Unemployment Compensation Fund, or
which as a condition for full tax credit against the tax
imposed by the federal Unemployment Tax Act are required
to be covered under this chapter.

CHAPTER 203

(H. B. 3095 - By Delegates Summers, Hollen, Graves,
Anderson, Malcolm, Pack, Pethtel and Evans)

[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 §5-10-22l; and to
amend said code by adding thereto a new section, designated
§18-7A-26w, all relating to establishing a minimum monthly
retirement annuity for certain retirants with 25 or more years
of credited service.

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.

§5-10-22l. Minimum benefit for certain retirants.

(a) For purposes of this section:
(1) “Elected public official” means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) “Temporary legislative employee” means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, including the Joint Committee on Government and Finance, whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

(b) If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) with at least 25 years of credited service as of the effective date of this section is less than $750 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the retirant (or if applicable, his or her beneficiary) shall be increased to $750 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(c) Notwithstanding the provisions of subsection (b) of this section to the contrary, if the retirement annuity of a beneficiary of a retirant who chose option B – modified joint and survivor annuity as provided in §5-10-24 of this code, and who had at least 25 years of credited service as of the effective date of this section is less than $375 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $375 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.
(d) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: Provided, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and §5-10-27a of this code.

(e) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26w. Minimum benefit for certain retired members.

(a) If the retirement annuity of a retirant (or applicable beneficiary thereof) with at least 25 years of total service is less than $750 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for the retirant shall be increased to $750 per month: Provided, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at $4,800 per year pursuant to §18-7A-14a of this code.

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, if the retirement annuity of a beneficiary of a retirant who chose option B – 50% joint and survivor annuity as provided in §162-4-5.1.3 and who had at least 25 years of credited service as of the effective date of this section is less than $375 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $375 per month: Provided,
That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at $4,800 per year pursuant to §18-7A-14a of this code.

(c) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: Provided, That the minimum benefit provided in this section is subject to any limitations thereon under §415 of the Internal Revenue Code of 1986, as the same may be amended, and §18-7A-28a of this code.

(d) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

CHAPTER 204


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

AN ACT to amend and reenact §5-5-4a of the Code of West Virginia, as amended, all relating to employees of the Department of Health and Human Resources; providing that the Department of Health and Human Resources shall develop a special merit-based system for specified employees at state-operated acute care, long-term care, psychiatric care, clinical,
and medical facilities; providing for an effective date; providing that provisions of the West Virginia Public Employees Grievance Act apply to employees of the special merit-based system; providing that the Department of Health and Human Resources may conduct a marketplace analysis; and providing for emergency rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4a. Department of Health and Human Resources facility employee classifications.

(a) The Legislature finds that state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities have extreme difficulty in recruiting and retaining physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, and other employees who assist in the direct provision of medical care to patients in those facilities.

(b) The Department of Health and Human Resources shall develop a special merit-based system, including an application and appointment procedure for physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, and other employees who assist in the direct provision of medical care to patients at state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities. The procedure shall include classification specifications, and may include compensation adjustments, retention incentives, and hiring approval by the secretary. The secretary shall have the full authority to evaluate applicants for employment or promotion or make classification determinations for positions within the special merit-based system. The special merit-based system shall be approved by the State Personnel Board. The pay rates and employment requirements shall be put into effect no sooner than January 1, 2020, and no later than July 1, 2020.
(c) Funding for the pay rates and employment requirements shall be provided from the appropriation to the Department of Health and Human Resources. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

(d) The provisions of §6C-2-1 et seq. of this code shall be applicable to the employees of the special merit-based system: Provided, That the Division of Personnel shall not be a mandatory party to any public employee grievance filed by any employee in the special merit-based system.

(e) The department may conduct periodic wage and compensation analysis of identified market rates for the above positions as determined necessary by the secretary.

(f) The secretary may promulgate emergency rules and shall propose legislative rules pursuant to the provisions of §29A-3-1 et seq. of this code as may be necessary to implement and comply with the provisions of this section.

CHAPTER 205

(H. B. 3139 - By Delegates Criss, Ellington, Hartman, Bates and Barrett)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §5-16-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11B-2-15a, all relating generally to funding of Public Employees Health Insurance Program; requiring the finance board to maintain a reserve
fund at actuarily recommended amounts of at least 10 percent of plan costs; removing requirement to transfer moneys resulting from plan savings into reserve fund; removing requirement that excess funds be transferred to West Virginia Retiree Health Benefit Trust Fund; establishing PEIA Rainy Day Fund as special, nonexpiring, interest-bearing revenue account in the State Treasury; providing funding for the Fund from appropriations, investment income and other sources; providing for the administration of the fund, including investment of funds, transfer of funds, and purposes for which the fund can be used; and authorizing the promulgation of emergency and legislative rules.

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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-25. Reserve fund.

Upon the effective date of this section, the finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year. Beginning with the fiscal year 2002 plan and for each succeeding fiscal year plan, the finance board shall maintain the actuarily recommended reserve in an amount no less than 10 percent of the projected total plan costs for that fiscal year in the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature in accordance with the provisions of this article.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15a. PEIA Rainy Day Fund.
(a) There is hereby created in the State Treasury a special account, designated the PEIA Rainy Day Fund, which is an interest-bearing account administered by the Secretary of Revenue in accordance with the provisions of this section.

(b) The PEIA Rainy Day Fund may consist of moneys appropriated by the Legislature, income from investment of moneys held in the special revenue account, and all other sums available for deposit to the account, public or private. Any balance remaining in the special revenue account at the end of the fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and may be used in a manner consistent with this article.

(c) The Secretary of Revenue, upon the written approval of the Governor, may transfer moneys from the PEIA Rainy Day Fund to the Public Employees Insurance Agency only to (1) reduce or prevent benefit cuts, (2) reduce premium increases, or (3) any combination thereof. The amount of moneys transferred may be included in the calculation of any plan year aggregate premium cost-sharing percentages between employers and employees.

(d) The Secretary of Revenue may contract with the West Virginia Investment Management Board, or the West Virginia Board of Treasury Investments, for any services with respect to fund investments which the secretary considers necessary.

(e) The Secretary of Revenue may promulgate legislative rules, and emergency rules as provided in §29A-3-15 of this code, as the secretary considers necessary to implement and administer the provisions of this section.
AN ACT to amend and reenact §16-4C-5 of the Code of West Virginia, 1931, as amended, relating generally to the Emergency Medical Services Advisory Council; reconfiguring and increasing the membership of the council by adding three voting citizen-members; and requiring three members to be representative of professional groups.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

(a) The Emergency Medical Services Advisory Council, created and established by former §16-4C-7 of this code, is continued for the purpose of developing, with the commissioner, standards for emergency medical services personnel and for the purpose of providing advice to the Office of Emergency Medical Services and the commissioner with respect to reviewing and making recommendations for, and providing assistance to, the establishment and maintenance of adequate emergency medical services for all portions of this state.

(b) The council shall have the duty to advise the commissioner in all matters pertaining to his or her duties...
and functions in relation to carrying out the purposes of this article.

(c) The council shall be composed of 18 members appointed by the Governor by and with the advice and consent of the Senate. The Mountain State Emergency Medical Services Association shall submit to the Governor a list of six names of representatives from its Association and a list of three names shall be submitted to the Governor of representatives of their respective organizations by the County Commissioners’ Association of West Virginia, the West Virginia State Firemen’s Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia, and the state Department of Education. The Governor shall appoint from the respective lists submitted two persons who represent the Mountain State Emergency Medical Services Association, one of whom shall be a paramedic and one of whom shall be an emergency medical technician-basic; and one person from the County Commissioners’ Association of West Virginia, the West Virginia State Firemen’s Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia, and the state Department of Education. In addition, the Governor shall appoint the following:

(1) One person to represent emergency medical services providers operating within the state;

(2) One person to represent small emergency medical services providers operating within this state;
(3) One person to represent emergency medical services training officers or representatives;

(4) Two people to represent emergency medical services supervisors or administrators; and

(5) Three persons to represent the general public who shall serve as voting members.

(d) Not more than six of the members may be appointed from any one congressional district.

(e) Each term is to be for three years, and no member may serve more than four consecutive terms.

(f) The council shall choose its own chairman and meet at the call of the commissioner at least twice a year.

(g) The members of the council shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day, or substantial portion thereof, engaged in the performance of official duties.
AN ACT to amend and reenact §16-5T-3 and §16-5T-4 of the Code of West Virginia, 1931, as amended, all relating to drug overdoses; requiring entities report drug overdoses; requiring details for drug overdose reports; eliminating mandatory reporters; and making grammatical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-3. Reporting system requirements; implementation; central repository requirement.

(a) The Office of Drug Control Policy shall implement a program in which a central repository is established and maintained that shall contain overdose information via an appropriate information technology platform with secure access for the purpose of making decisions regarding the allocation of public health and educational resources. In implementing this program, the office shall consult with all affected entities, including law-enforcement agencies, health care providers, emergency response providers, pharmacies, and medical examiners.

(b) The program authorized by this section shall be designed to minimize inconvenience to all entities maintaining possession of the relevant information while effectuating the collection and storage of the required information.
§16-5T-4. Entities required to report; required information.

(a) To fulfill the purposes of this article, the following information shall be reported, within 72 hours after the provider responds to the incident and via an appropriate information technology platform, to the Office of Drug Control Policy:

1. The date and time of the overdose;
2. The approximate address of where the person was picked up or where the overdose took place;
3. Whether an opioid antagonist was administered;
4. Whether the overdose was fatal or nonfatal;
5. The gender and approximate age of the person receiving attention or treatment; and
6. The suspected controlled substance involved in the overdose.

(b) The following entities shall be required to report information contained in §16-5T-4(a) of this code:

1. Health care providers;
2. Medical examiners;
3. Law-enforcement agencies, including, state, county, and local police departments;
4. Emergency response providers; and
5. Hospital emergency rooms.

(c) The data collected by the office pursuant to this subsection shall be made available to law enforcement, local health departments, and emergency medical service agencies in each county.
(d) Entities who are required to report information to or from the office pursuant to this section in good faith are not subject to civil or criminal liability for making the report.

(e) For the purposes of this section:

“Information technology platform” means the Washington/Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program or other program identified by the department in rule.

“Overdose” means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death believed to be caused by abuse and misuse of prescription or illicit drugs or by substances that a layperson would reasonably believe to be a drug.

“Opioid antagonist” means a federal Food and Drug Administration-approved drug for the treatment of an opiate-related overdose, such as naloxone hydrochloride or other substance that, when administered, negates or neutralizes, in whole or in part, the pharmacological effects of an opioid in the body.

CHAPTER 208

(Com. Sub. for S. B. 537 - By Senators Boso and Cline)

[Passed March 8, 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 section, designated §16-29B-31, relating to establishing health care standards by the Health
Care Authority; establishing a workgroup to review certain standards in this state; designating members of workgroup; providing for duties of workgroup; providing that the Health Care Authority provide staff for the workgroup; providing for public hearings; providing for the submission of a final report; establishing a termination date of the workgroup; providing a time frame to review health care standards; freezing current standards for a period of time; and establishing a time frame to complete the review.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-31. Hospice need standard review; membership; report to the Legislative Oversight Committee on Health and Human Resources.

(a) The West Virginia Health Care Authority shall form a working group to review the provision of hospice services in West Virginia. The workgroup shall be comprised of the following members:

1. The Chairman of the West Virginia Health Care Authority or designee, who shall also be the chair of this workgroup;
2. The Secretary of the Department of Health and Human Resources, or designee;
3. The Dean of the West Virginia University School of Medicine, or designee;
4. The Dean of the Marshall University, Joan C. Edwards School of Medicine, or designee;
5. Six hospice providers chosen by the Hospice Council of West Virginia:
   (A) One of whom must be a for-profit service provider;
(B) Two of whom must operate a free-standing inpatient hospice facility; and

(C) An equal number of providers selected pursuant to this subsection shall reside in each congressional district;

(6) One member chosen by the West Virginia chapter of the American Cancer Society;

(7) One member chosen by the Alzheimer’s Association of West Virginia;

(8) One member chosen by the West Virginia Rural Health Association;

(9) One member chose by the West Virginia American Association of Retired Persons;

(10) A hospital-based hospice provider chosen by the West Virginia Hospital Association;

(11) One member chosen by the West Virginia Nurses Association;

(12) A physician chosen by the West Virginia State Medical Association with a practice treating terminal diseases; and

(13) A physician chosen by the West Virginia Osteopathic Medical Association whose practice includes geriatric patients.

(b) The workgroup shall have the following duties:

(1) Establish a model for data collection to best predict future the need of hospice services in West Virginia and collect the necessary data;

(2) Review the access to hospice services in West Virginia as well as future needs;
(3) Examine how West Virginia serves its population with hospice services;

(4) Examine the financial condition of the current delivery system;

(5) Recommend a need methodology to the authority for the development of new hospice services; and

(6) Make other recommendations the workgroup deems appropriate.

c The authority shall provide staff for the workgroup and the workgroup shall schedule one public hearing in each of the congressional districts in West Virginia as it relates to the provision of hospice services in the state. The workgroup shall develop and approve a final report by September 30, 2019, and a copy shall be submitted to the Joint Committee of Government and Finance of the Legislature, the Governor, and the authority. The workgroup will sunset on December 31, 2019.

d The authority shall consider modifying the hospice standards based on the report’s findings no later than December 1, 2019: Provided, That prior to approving the modified standards, the authority shall present its proposed changes to the hospice need standards to the Legislative Oversight Committee on Health and Human Resources within 30 days after development of the drafts and prior to submission of the final hospice need standards to the Governor.

e The need standards regulating hospice services and home health services shall be those that were in effect on January 1, 2018, and shall remain in effect until the Governor approves the new standards no sooner than December 31, 2019.
AN ACT to amend and reenact §16-5B-14 of the Code of West Virginia, 1931, as amended, relating to permitting a critical access hospital to become a community outpatient medical center; establishing certain conditions and requirements; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.


1 (a) A hospital located in an urban area (Metropolitan Statistical Areas (MSA) county), can be considered rural for the purposes of a designation as a critical access hospital pursuant to 42 U.S.C. §1395i-4(c)(2) if it meets the following criteria:

2 (1) Is enrolled as both a Medicaid and Medicare provider and accepts assignment for all Medicaid and Medicare patients;

3 (2) Provides emergency health care services to indigent patients;

4 (3) Maintains 24-hour emergency services; and
(4) Is located in a county that has a rural population of 50 percent or greater as determined by the most recent United States decennial census.

(b) A critical access hospital designated pursuant to this section may apply to be designated as a community outpatient medical center if:

(1) It has been designated as a critical access hospital for at least one year; and

(2) It is designated as a critical access hospital at the time of application to convert to a community outpatient medical center.

(c) In addition to the requirements of subsection (b) of this section, a community outpatient medical center shall, at a minimum:

(1) Provide emergency medical care and observation care 24 hours a day, seven days a week;

(2) Treat all patients regardless of insurance status; and

(3) Have protocols in place for the timely transfer of patients who require a higher level of care.

(d) The Department of Health and Human Resources shall propose a new rule for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, to implement the provisions of this section.
AN ACT to amend and reenact §16-19-3, §16-19-5, and §16-19-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2-31 of said code, all relating to permitting individuals to make an anatomical gift by authorizing a statement or symbol to be imprinted on his or her hunting or fishing license; amending definition of “document of gift” to include a statement or symbol on a hunting or fishing license; adding definition; requiring the Division of Natural Resources to provide information regarding a donor’s making, amendment to, or revocation of an anatomical gift to a donor registry; requiring the Director of the Division of Natural Resources to provide information regarding the anatomical organ donation program; providing for the reimbursement of costs to the Division of Natural Resources for costs relating to the creation and administration of an anatomical gift record by the Center for Organ Recovery and Education; and absolving the Division of Natural Resources of responsibility to collect and provide records if it is not reimbursed for costs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. ANATOMICAL GIFT ACT.

As used in this article:

“Adult” means an individual who is at least 18 years of age.

“Agent” means an individual:

1. Authorized by a medical power of attorney to make health care decisions on behalf of a prospective donor; or

2. Expressly authorized by any other record signed by the donor to make an anatomical gift on his or her behalf.

“Anatomical gift” means a donation of all or part of a human body, to take effect after the donor’s death, for the purpose of transplantation, therapy, research, or education.

“Authorized person” means a person other than the donor who is authorized to make an anatomical gift of the donor’s body or part by §16-19-4 or §16-19-9 of this code.

“Certification of death” means a written pronouncement of death by an attending physician. Certification is required before an attending physician can allow removal of any part from the decedent’s body for transplant purposes.

“Decedent” means a deceased individual whose body is or may be the source of an anatomical gift. The term “decedent” includes a stillborn infant and, subject to restrictions imposed by law other than this article, a fetus.

“Disinterested witness” means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of, or another adult who exhibited special care and concern for, an individual who has made, amended, revoked, or refused to make an anatomical gift. The term “disinterested witness” does not include a person to whom an anatomical gift may pass pursuant to §16-19-11 of this code.
“Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver’s license, identification card, hunting or fishing license, or donor registry.

“Donor” means an individual whose body or part is the subject of an anatomical gift.

“Donor registry” means a database that contains records of anatomical gifts and amendments to, or revocations, of anatomical gifts.

“Driver’s license” means a license or permit issued by the Division of Motor Vehicles to operate a vehicle.

“Eye bank” means a person licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

“Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term “guardian” does not include guardian ad litem.

“Hunting or fishing license” means a license issued by the Division of Natural Resources pursuant to §20-2-1 et seq. of this code, for hunting and fishing in the state of West Virginia.

“Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

“Identification card” means an identification card issued by the Division of Motor Vehicles pursuant to §17B-2-1 of this code.

“Know” means to have actual knowledge. It does not include constructive notice and other forms of imputed knowledge.
“Medical examiner” means an individual appointed pursuant to §61-12-3 et seq. of this code to perform death investigations and to establish the cause and manner of death. The term “medical examiner” includes any person designated by the medical examiner to perform any duties required by this article.

“Minor” means an individual who is under 18 years of age.

“Organ procurement organization” means a nonprofit entity designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization pursuant to 42 U.S.C. §273(b).

“Parent” means another person’s natural or adoptive mother or father whose parental rights have not been terminated by a court of law.

“Part” means an organ, an eye, or tissue of a human being. The term does not include the whole body.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Physician” means an individual authorized to practice medicine or osteopathy under the law of any state.

“Physician assistant” has the meaning provided in §30-3E-1 of this code.

“Procurement organization” means an eye bank, organ procurement organization, or tissue bank.

“Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The
term “prospective donor” does not include an individual who has made a refusal.

“Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

“Recipient” means an individual into whose body a decedent’s part has been or is intended to be transplanted.

“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.

“Revocation” means the affirmative declaration of the potential donor’s withdrawal of their decision to make or not make a document of gift. It does not have the same meaning as a refusal but only establishes that the potential donor chooses not to make an affirmative declaration of their wishes.

“Refusal” means a record created under §16-19-7 of this code that expressly states an individual’s intent to bar other persons from making an anatomical gift of his or her body or part.

“Sign” means to execute or adopt a tangible symbol or attach to or logically associate with the record an electronic symbol, sound or process, with the present intent to authenticate or adopt a record.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Surrogate” means an individual 18 years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person,
possesses the capacity to make health care decisions, and is identified or selected by the attending physician or advanced nurse practitioner in accordance with §16-30-1 et seq. of this code as the person who is to make those decisions in accordance with the provisions of this article.

“Technician” means an individual qualified to remove or process parts by an organization that is licensed, accredited, or regulated under federal or state law. The term “technician” includes an enucleator, i.e., an individual who removes or processes eyes or parts of eyes.

“Tissue” means a portion of the human body other than an organ or an eye. The term “tissue” does not include blood unless the blood is donated for the purpose of research or education.

“Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

“Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.


(a) A donor may make an anatomical gift:

(1) By authorizing a statement or symbol to be imprinted on his or her driver’s license, identification card, or hunting or fishing license indicating that he or she has made an anatomical gift;

(2) In a will;

(3) During a terminal illness or injury, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
(4) As provided in subsection (b) of this section.

(b) (1) A donor or a person authorized by §16-9-4 of this code may make a gift by:

(A) A donor card or other record signed by the donor or the authorized person; or

(B) Authorizing a statement or symbol indicating that the donor has made an anatomical gift to be included on a donor registry.

(2) If the donor or the authorized person is physically unable to sign a record, another individual may sign at the direction of the donor or the authorized person if the document of gift:

(A) Is witnessed and signed by at least two adults, at least one of whom is a disinterested witness; and

(B) Contains a statement that it has been signed and witnessed as required by paragraph (A) of this subdivision.

(c) Revocation, suspension, expiration, or cancellation of a driver’s license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor’s death regardless of whether the will is probated. Invalidation of the will after the donor’s death does not invalidate the gift.


(a) The Division of Motor Vehicles may establish or contract for the establishment of a donor registry.

(b) The Division of Motor Vehicles shall cooperate with a person that administers any donor registry established or contracted for pursuant to this section or recognized for the purpose of transferring to the donor registry all relevant
information regarding a donor’s making, amendment to, or revocation of an anatomical gift.

(c) The Division of Natural Resources shall provide all relevant information regarding a donor’s making, amendment to, or revocation of an anatomical gift to a donor registry established or contracted for pursuant to this section.

(d) A donor registry must:

(1) Allow a donor or person authorized under §16-19-4 of this code to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(2) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(3) Be accessible for purposes of subdivisions (1) and (2) of this subsection 24 hours a day, seven days a week.

(e) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(f) The Director of the Division of Natural Resources shall provide information regarding the existence of the anatomical organ donation program, the procedures for a hunting or fishing license applicant to indicate his or her desire to make an anatomical gift, and having document of gift affixed to his or her hunting or fishing license pursuant to this article.
(g) The Division of Natural Resources shall be reimbursed for all costs relating to the creation and administration of an anatomical gift record by the Center for Organ Recovery and Education: Provided, That the division is absolved of all responsibilities to collect and provide donor registrant records pursuant to this article if not reimbursed according to this subsection.

(h) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any private donor registry must comply with subsections (d) and (e) of this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-31. Size and form of license and tag; contents; unlawful to alter licenses or permits; penalty.

(a) The size, content, and form of all licenses, tags, and permits shall be prescribed by the director. The information which a licensee is required to furnish shall be placed upon the license by the license issuing authority before delivery of such license to the licensee: Provided, That all hunting or fishing licenses as defined in §16-19-3 of this code include a document of gift indicating the applicant has made an anatomical gift, as defined in §16-19-3 of this code.

(b) It is unlawful for any person to alter, mutilate, or deface any license, tag, or permit, or the entries thereon, for the purpose of evading the provisions of this chapter.

Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $20 nor more than $300; and upon a second and subsequent conviction thereof, shall be fined not less than $20 nor more than $300, or confined in jail not less than 10 nor more than 100 days, or both fined and confined.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-57-1, §16-57-2, §16-57-3, and §16-57-4, all relating to the regulation of sudden cardiac arrest prevention; training and education; rulemaking; and removal from athletic activity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 57. SUDDEN CARDIAC ARREST PREVENTION ACT.

§16-57-1. Purpose.

This article shall be known and may be cited as the Sudden Cardiac Arrest Prevention Act. In the United States there are more than 356,000 out-of-hospital cardiac arrests annually and nearly 90 percent of them are fatal. The purpose of this article is to promote education regarding sudden cardiac arrest and thereby prevent sudden cardiac arrest from occurring.

§16-57-2. Definitions.

The following words and phrases when used in this article have the meanings given to them in this section unless the context clearly indicates otherwise.

“Athletic activity” means all the following:
(a) Interscholastic athletics;

(b) An athletic contest or competition that is sponsored by or associated with a school entity, including cheerleading, club-sponsored sports activities, and sports activities sponsored by school-affiliated organizations;

(c) Noncompetitive cheerleading that is sponsored by school-affiliated organizations; and

(d) Practices, interschool practices, and scrimmages for all of the activities described in this section.

“School” means any school under the jurisdiction of a county board of education.

§16-57-3. Applicability, educational materials, removal from play, and training.

(a) The Department of Education, working in conjunction with the State Health Officer of the Department of Health and Human Resources, shall develop educational materials and guidelines, including a warning sign information sheet, regarding sudden cardiac arrest, including, but not limited to, symptoms and warning signs for students of all ages and risks associated with continuing to play or practice after experiencing the following symptoms: Fainting or seizures during exercise, unexplained shortness of breath, chest pains, dizziness, racing heart, or extreme fatigue. Training materials shall be developed for the use of parents, students, coaches, and administrators.

(b) The educational materials and other relevant materials shall be posted on the website of the Department of Education, Department of Health and Human Resources, and public schools to inform and educate parents, students, and coaches participating, or desiring to participate in, an athletic activity about the nature and warning signs of sudden cardiac arrest.
(c) Prior to the start of each athletic season, a school subject to this section shall hold an informational meeting for students, parents, guardians, or other persons having care or charge of a student regarding the warning signs of sudden cardiac arrest for children of all ages.

(d) No student may participate in an athletic activity until the student has submitted to a designated school official, a form signed by the student and the parent, guardian, or other person having care or charge of the student stating that the student and the parent, guardian, or other person having care or charge of the student have received and reviewed a copy of the information developed by the departments of health and education and posted on their respective webpages. A completed form shall be submitted each school year in which the student participates in an athletic activity.

(e) No individual may coach an athletic activity unless the individual has completed, on an annual basis, the sudden cardiac arrest training course approved by the Department of Education and Department of Health and Human Resources.

(f) A student shall not be allowed to participate in an athletic activity if either of the following is the case:

1. The student is known to have exhibited syncope or fainting at any time prior to or following an athletic activity and has not been evaluated and cleared for return after exhibiting syncope or fainting; or

2. The student experiences syncope or fainting while participating in, or immediately following, an athletic activity.

(g) If a student is not allowed to participate in or is removed from participation in an athletic activity under subsection (f) of this section, the student shall not be allowed to return to participation until the student is
evaluated and cleared for return in writing by any of the following:

(1) A physician authorized under §30-3-1 et seq. and §30-14-1 et seq. of this code;

(2) A certified nurse practitioner, clinical nurse specialist, or certified nurse midwife; or

(3) A physician assistant licensed under §30-3E-1 et seq. and §30-14A-1 et seq. of this code.

(h) The licensed health care professional may consult with any other licensed or certified health care professionals in order to determine whether a student is ready to participate in the athletic activity.

(i) The governing body of a school shall establish penalties for a coach found in violation of the requirements of subsection (f) of this section.

(j) A school district, member of a school district, board of education, school district employee or volunteer, including a coach, is not liable for damages in a civil action for injury, death, or loss to person or property allegedly arising from providing services or performing duties under this section, unless the act or omission constitutes willful or wanton misconduct. This section does not eliminate, limit, or reduce any other immunity or defense that a school district, member of a board of education, or school district employee or volunteer, including a coach, may be entitled to under the law of this state.

§16-57-4. Rulemaking.

The Department of Education, acting in conjunction with the Department of Health and Human Resources, may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code that are necessary to effectuate the provisions of this article.
AN ACT to repeal §16-2H-3 and §16-2H-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-2H-2 of said code, relating to the Primary Care Support Program; eliminating loan fund; and creating grant fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2H. PRIMARY CARE SUPPORT PROGRAM.

§16-2H-2. Primary Care Support Program.

(a) There is hereby created the Primary Care Support Program within the Bureau of Public Health within the Department of Health and Human Resources. The program shall provide technical and organizational assistance to community-based primary care services.

(b) The Primary Care Support Program shall create and administer a Primary Care Grant Fund to grant money to federally qualified health centers and federally qualified health center look-alikes, and secure federal medical assistance percentage funding. Federally qualified health center look-alikes already receiving grant funding at the time this program is created shall continue to receive grant funding annually. Upon approval by the secretary of the department, federally qualified health centers in need of immediate financial assistance may be granted funding annually. All funds designated to federally qualified health
centers may be transferred to Medicaid for the purpose of
securing federal medical assistance percentage funding.

Additionally, the secretary may use certain portions of
funds within this account for activities in support of rural
and primary care.

There is hereby created a special revenue fund in the
State Treasury to be known as the Primary Care Support
Fund into which all appropriations, payments, and interest
to the fund created herein shall be deposited, to be held and
disbursed according to law.

(c) The Primary Care Support Program shall conduct
and make available upon request an annual primary care
report which shall consist of total West Virginia Medicaid
primary care expenditures as a percentage of total West
Virginia Medicaid expenditures.

(d) The Department of Health and Human Resources
shall promulgate rules in accordance with §29A-3-1 et seq.
of this code to implement the provisions of this article, and
shall approve all loans, grants, and disbursements of money
authorized by this article.

§16-2H-3. Preventive services and health education.

[Repealed.]

§16-2H-4. Advisory board.

[Repealed.]
AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to preventing the secretary of the Department of Health and Human Resources from enforcing certain rules relating to public pools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

(a) The secretary may propose rules in accordance with the provisions of §29A-3-1 et seq. of this code that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and intellectual disability centers and any other areas necessary to advise the secretary on rules.

(b) The rules may include, but are not limited to, the regulation of:

(1) Land usage endangering the public health: Provided, That no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or
parcels have an average frontage of not less than 150 feet even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to:

(A) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit;

(B) Propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or

(C) Restrict any subdivision or development which might endanger the public health, the sanitary condition of streams or sources of water supply;

(2) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(3) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state, whether publicly or privately owned;

(4) Safe drinking water, including:
(A) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(B) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption, or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(C) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(5) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other requirements in accordance with §16-7-1 et seq. of this code as are necessary to protect the health of the citizens of this state;

(6) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed, and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency
medical care technician-paramedics. Any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of §16-4C-1 et seq. of this code;

(7) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, “bed and breakfast inn” means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(8) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees, and permit fees;

(9) The collection of data on health status, the health system and the costs of health care;

(c) The secretary shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code for the distribution of state aid to local health departments and basic public health services funds. The rule shall include the following provisions:

   Base allocation amount for each county;

   Establishment and administration of an emergency fund of no more than two percent of the total annual funds of which unused amounts are to be distributed back to local boards of health at the end of each fiscal year;
A calculation of funds utilized for state support of local health departments;

Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services;

A hold-harmless provision to provide that each local health department receives no less in state support for a period of four years beginning in the 2009 budget year.

The Legislature finds that an emergency exists and, therefore, the secretary shall file an emergency rule to implement the provisions of this section pursuant to the provisions §29A-3-15 of this code. The emergency rule is subject to the prior approval of the Legislative Oversight Commission on Health and Human Resources Accountability prior to filing with the Secretary of State.

(d) The secretary may propose rules for legislative approval that may include the regulation of other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.

(e) The secretary shall not review any repair or modernization of equipment at a public pool facility as long as such activity does not change the scope of the facility or its current use and such activity does not exceed $25,000 in planned cost.
CHAPTER 214


[Passed March 6, 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 article, designated §16-56-1, §16-56-2, §16-56-3, §16-56-4, §16-56-5, and §16-56-6, all relating to permitting a pharmacist to dispense a tobacco cessation therapy under a standing prescription drug order.

Be it enacted by the Legislature of West Virginia:

ARTICLE 56. TOBACCO CESSATION THERAPY ACCESS ACT.

§16-56-1. Definitions.

1 As used in this article:

2 “Dispense” means the same as that term is defined in §30-5-4 of this code.

3 “Patient counseling” means the same as that term is defined in §30-5-4 of this code.

4 “Pharmacist” means the same as that term is defined in §30-5-4 of this code.

5 “Pharmacy intern” means the same as that term is defined in §30-5-4 of this code.

6 “Physician” means the same as that term is defined in §30-3E-1 of this code.
“Tobacco cessation therapy” means a tobacco cessation noncontrolled prescription medication, over-the-counter medication or other professional service, that is approved by the United States Food and Drug Administration for treating tobacco use including all of the of various dosage forms.

§16-56-2. Voluntary participation.

This article does not create a duty or standard of care for a person to prescribe or dispense tobacco cessation therapy.

§16-56-3. Authorization to dispense.

A pharmacist licensed under §30-5-1 et seq. of this code may initiate and dispense a noncontrolled prescription medication, over-the-counter medication, or other professional service to a patient who is 18 years old or older; pursuant to a standing prescription drug order made in accordance with §16-56-4 of this code without any other prescription drug order from a person licensed to prescribe a tobacco cessation therapy; and in accordance with the dispensing guidelines in §16-56-6 of this code.

§16-56-4. Standing prescription drug orders for tobacco cessation therapy.

(a) The Commissioner of the Bureau for Public Health or designee shall prescribe on a statewide basis a tobacco cessation therapy by one or more standing orders permitting pharmacists to initiate the dispensing of noncontrolled prescription medications, over-the-counter medications, or other professional services to eligible individuals:

(b) A standing order must specify, at a minimum:

(1) Use of the Tobacco Cessation Therapy Protocol, that has been approved by the Commissioner of the Bureau for Public Health in collaboration with the Board of Pharmacy and the Board of Medicine;

(2) The eligible individuals to whom the tobacco cessation therapy may be dispensed;
(3) The timeline for renewing and updating the standing order.

§16-56-5. Pharmacist education and training required.

The Board of Pharmacy shall approve a training program or programs to be eligible to participate in the utilization of the standing prescription drug order for tobacco cessation therapy by a pharmacist.

Documentation shall be provided to the Board of Pharmacy upon request.

§16-56-6. Guidelines for dispensing a tobacco cessation therapy.

(a) A pharmacist who dispenses a tobacco cessation therapy under this article shall follow the Tobacco Cessation Therapy Protocol, that has been approved by the Commissioner of the Bureau for Public Health in collaboration with the Board of Pharmacy and the Board of Medicine, before dispensing the tobacco cessation therapy. The protocol shall include the:

(1) Criteria for identifying individuals eligible to receive the tobacco cessation therapy or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or therapy is contraindicated;

(2) Medications authorized by the protocol;

(3) Procedures for initiation and monitoring of therapies, including a care plan based on clinical guidelines;

(4) Education requirements to be provided to the person receiving the medications and follow-up care;

(5) Documentation procedures in the pharmacy system; and

(6) Notification of the individual’s primary care provider, if provided, within two business days.
(b) If when following the protocol it is indicated that it is unsafe to dispense a tobacco cessation therapy to a patient, the pharmacist:

(A) May not dispense a tobacco cessation therapy to the patient; and

(B) Shall refer the patient to their primary care provider.

(c) The Board of Pharmacy regulates a pharmacist who dispenses a tobacco cessation noncontrolled prescription medication, over-the-counter medication, or other professional service.

CHAPTER 215

 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-58-1, §16-58-2, §16-58-3, §16-58-4, §16-58-5 and §16-58-6, all relating to permitting a pharmacist to dispense a self-administered hormonal contraceptive under a standing prescription drug order; defining terms; providing certain authority to the State Health Officer; clarifying that certain federal requirements are applicable; establishing protocol to be followed; requiring the pharmacist to be trained; providing guidelines to dispensing; and clarifying that the Board of Pharmacy regulates the actions of Pharmacist acting under this article.

Be it enacted by the Legislature of West Virginia:
ARTICLE 58. FAMILY PLANNING ACCESS ACT.


1 As used in this article:

2 “Dispense” means the same as that term is defined in §30-5-4 of this code.

3 “Patient counseling” means the same as that term is defined in §30-5-4 of this code.

4 “Pharmacist” means the same as that term is defined in §30-5-4 of this code.

5 “Self-administered hormonal contraceptive” means a self-administered hormonal contraceptive that is approved by the United States Food and Drug Administration to prevent pregnancy and does not include the class of emergency contraceptives commonly known as the “morning after pill” or “Plan B”.


1 This article does not create a duty or standard of care for a person to prescribe or dispense a self-administered hormonal contraceptive.


1 (a) A pharmacist licensed under §30-5-1 et seq. of this code may dispense a self-administered hormonal contraceptive: (1) pursuant to a standing prescription drug order made in accordance with §16-57-4 of this code without any other prescription drug order from a person licensed to prescribe a self-administered hormonal contraceptive; (2) in accordance with the dispensing guidelines in §16-57-6 of this code; and (3) to a patient who is 18 years old or older.
(b) All state and federal laws governing insurance coverage of contraceptive drugs, devices, products, and services shall apply to self-administered contraceptives dispensed by a pharmacist under a standing order pursuant to this section.


The state health officer may prescribe on a statewide basis a self-administered hormonal contraceptive by one or more standing orders in accordance with a protocol consistent with the United States Medical Eligibility Criteria for Contraceptive Use (MEC) Centers for Disease Control and Prevention, that requires:

1. Use of the self-screening risk assessment questionnaire described below;
2. Written and oral education;
3. The timeline for renewing and updating the standing order;
4. Who is eligible to utilize the standing order;
5. The pharmacist to make and retain a record of each person to whom the self-administered hormonal contraceptive is dispensed, including:
   A. The name of the person;
   B. The drug dispensed; and
   C. Other relevant information.


(a) The Board of Pharmacy, in collaboration with the Bureau for Public Health, shall approve a training program or programs to be eligible to participate in the utilization of
the standing prescription drug order for self-administered hormonal contraceptives by a pharmacist.

(b) Documentation of training shall be provided to the Board of Pharmacy upon request.


(a) A pharmacist who dispenses a self-administered hormonal contraceptive under this article:

(1) Shall obtain a completed self-screening risk assessment questionnaire that has been approved by the state health officer in collaboration with the Board of Pharmacy, the Board of Osteopathic Medicine, and the Board of Medicine from the patient before dispensing the self-administered hormonal contraceptive;

(2) Shall notify the patient’s primary care provider, if provided;

(3) If when dispensing within the guidelines it is unsafe to dispense a self-administered hormonal contraceptive to a patient then the pharmacist:

(A) May not dispense a self-administered hormonal contraceptive to the patient; and

(B) Shall refer the patient to a health care practitioner or local health department;

(4) May not continue to dispense a self-administered hormonal contraceptive to the patient for more than 12 months after the date of the initial prescription without evidence that the patient has consulted with a health care practitioner during the preceding 12 months; and

(5) Shall provide the patient with:

(A) Written and verbal information regarding:
(i) The importance of seeing the patient’s health care practitioner to obtain recommended tests and screening; and

(ii) The effectiveness and availability of long-acting reversible contraceptives and other effective contraceptives as an alternative to self-administered hormonal contraceptives; and

(B) A copy of the record of the encounter with the patient that includes:

(i) The patient’s completed self-assessment tool; and

(ii) A description of the contraceptives dispensed, or the basis for not dispensing a contraceptive.

(b) If a pharmacist dispenses a self-administered hormonal contraceptive to a patient, the pharmacist shall, at a minimum, provide the patient counseling regarding:

(1) The appropriate administration and storage of the self-administered hormonal contraceptive;

(2) Potential side effects and risks of the self-administered hormonal contraceptive;

(3) The need for backup contraception;

(4) When to seek emergency medical attention;

(5) The risk of contracting a sexually transmitted infection or disease, and ways to reduce the risk of contraction; and

(6) Any additional counseling outlined in the protocol as prescribed in §16-57-4 of this code.

(c) The Board of Pharmacy regulates a pharmacist who dispenses a self-administered hormonal contraceptive under this article.
CHAPTER 216

(Com. Sub. for H. B. 2607 - By Delegates Hill, Staggers, Howell, Rowan and D. Jeffries)

[Passed February 20, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2019.]

AN ACT to repeal §16-5C-16 and §16-5C-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5C-2, §16-5C-4, §16-5C-5, §16-5C-6, §16-5C-7, §16-5C-8, §16-5C-9, §16-5C-9a, §16-5C-10, §16-5C-11, §16-5C-12, §16-5C-12a, §16-5C-13, §16-5C-14, §16-5C-15, §16-5C-18, §16-5C-20, §16-5C-21, and §16-5C-22 of said code, all relating to the licensure of nursing homes; repealing duplicative sections of code; defining terms; clarifying rule requirements; and clarifying enforcement action and due process procedures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5C. NURSING HOMES.

§16-5C-2. Definitions.

1. As used in this article, unless a different meaning appears from the context:

3. “Deficiency” means a nursing home’s failure to meet the requirements specified in §16-5C-1 et seq. of this code and rules promulgated thereunder.

5. “Department” means the Department of Health and Human Resources.

7. “Director” means the director of the office of Health Facility Licensure and Certification.
“Distance learning technologies” means computer-centered technologies delivered over the internet, broadcasts, recordings, instructional videos, or videoconferencing.

“Household” means a private home or residence which is separate from or unattached to a nursing home.

“Immediate jeopardy” means a situation in which the nursing home’s noncompliance with one or more of the provisions of this article or rules promulgated thereunder has caused or is likely to cause serious harm, impairment or death to a resident.

“Nursing home” or “facility” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article. Nothing contained in this article applies to nursing homes operated by the federal government; or extended care facilities operated in conjunction with a hospital; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 et seq. of this code.
“Nursing care” means those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedure contributing to rehabilitation, and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person.

“Person” means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state.

“Resident” means an individual living in a nursing home.

“Review organization” means any committee or organization engaging in peer review or quality assurance, including, but not limited to, a medical audit committee, a health insurance review committee, a professional health service plan review committee or organization, a dental review committee, a physician’s advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, any committee or organization established or required under state or federal statutes, rules or regulations, and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of residents for the purposes of:

Evaluating and improving the quality of health care rendered; reducing morbidity or mortality; or establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care.
“Secretary” means the Secretary of the Department of Health and Human Resources or his or her designee.

“Sponsor” means the person or agency legally responsible for the welfare and support of a resident.

“Substantial compliance” means a level of compliance with the rules such that no deficiencies exist or such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

The secretary may define in the rules any term used herein which is not expressly defined.

§16-5C-4. Administrative and inspection staff.

The secretary may, at such time or times as he or she may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the department shall be members of the state civil service system and inspectors shall be trained to perform their assigned duties. Such inspectors and other employees as may be duly designated by the secretary shall act as the secretary’s representatives and, under the direction of the secretary, shall enforce the provisions of this article and all duly promulgated regulations and, in the discharge of official duties, shall have the right of entry into any place maintained as a nursing home.

§16-5C-5. Rules; minimum standards for nursing homes.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code. The secretary shall recommend the adoption, amendment or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article.

(b) The secretary shall recommend rules establishing minimum standards of operation of nursing homes including, but not limited to, the following:
(1) Administrative policies, including:

(A) An affirmative statement of the right of access to nursing homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy;

(B) A statement of the rights and responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement of residents’ rights as included in the United States Department of Health and Human Services regulations, in force on the effective date of this article, governing participation of nursing homes in the Medicare and Medicaid programs pursuant to 42 U.S.C.A. §§ 1395 et seq. and 1396 et seq.;

(C) The process to be followed by applicants seeking a license;

(D) The clinical, medical, resident, and business records to be kept by the nursing home;

(E) The procedures and inspections for the review of utilization and quality of resident care; and

(F) The procedures for informal dispute resolution, independent informal dispute resolution, and administrative due process, and when such remedies are available;

(2) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(3) Qualifications of the facility’s administrators, medical directors, nurses, aides, and other personnel;

(4) Safety requirements;

(5) Sanitation requirements;

(6) Personal services to be provided;
(7) Dietary services to be provided;

(8) Medical records;

(9) Social and recreational activities to be made available;

(10) Pharmacy services;

(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights;

(15) Visitation privileges that:

(A) Permit immediate access to a resident, subject to the resident’s right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(B) Permit immediate access to a resident, subject to reasonable restrictions and the resident’s right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and

(C) Permit access to other specific persons or classes of persons consistent with state and federal law; and

(16) Admission, transfer and discharge rights.

(c) To ensure compliance with §29A-3-11(b)(3), the secretary shall amend his or her legislative rule to exempt federally certified Medicare and Medicaid nursing facilities from provisions addressed in the federal regulations.

(d) The director shall permit the nonclinical instruction portions of a nurse aide training program approved by the Office of Health Facility Licensure and Certification to be provided through distance learning technologies.
§16-5C-6. License required; application; fees; duration; renewal.

No person may establish, operate, maintain, offer, or advertise a nursing home within this state unless and until he or she obtains a valid license therefor as hereinafter provided, which license remains unsuspended, unrevoked, and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any nursing home, as defined in §16-5C-2 of this code, which is being operated without a valid license from the secretary. The procedure for obtaining a license is as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the secretary, containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes, as established by this article and the rules lawfully promulgated hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address, and principal occupation:

(A) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the applicant;

(B) Of each officer and director of a corporate applicant;

(C) Of each trustee and beneficiary of an applicant which is a trust; and

(D) Where a corporation has a proprietary interest of 25 percent or more in an applicant, the name, address, and principal occupation of each officer and director of the corporation;
(3) The name and address of the owner of the premises of the nursing home or proposed nursing home, if he or she is a different person from the applicant, and in such case, the name and address:

(A) Of each person who, as a stockholder or otherwise, has a proprietary interest 10 percent or more in the owner;

(B) Of each officer and director of a corporate applicant; and

(C) Of each trustee and applicant, the name, address, and principal occupation of each officer and director of the corporation;

(4) Where the applicant is the lessee or the assignee of the nursing home or the premises of the proposed nursing home, a signed copy of the lease and any assignment thereof;

(5) The name and address of the nursing home or the premises of the proposed nursing home;

(6) A description of the nursing home to be operated;

(7) The bed quota of the nursing home;

(8) An organizational plan for the nursing home indicating the number of persons employed or to be employed and the positions and duties of all employees;

(9) The name and address of the individual who is to serve as administrator;

(10) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention, and sanitation as the secretary may require;

(11) A listing of other states in which the applicant owns, operates, or manages a nursing home or long-term care facility;
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(12) Such additional information as the secretary may require; and

(13) Assurances that the nursing home is in compliance with the provisions of §16-20-1 et seq. of this code.

(b) Upon receipt and review of an application for license made pursuant to §16-5C-6(a) of this code, and inspection of the applicant nursing home pursuant to §16-5C-9 and §16-5C-10 of this code, the secretary shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director, and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a nursing home by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years or consistent poor performance in other states;

(2) That the facility is under the supervision of an administrator who is licensed pursuant to the provisions of §30-25-1 et seq. of this code; and

(3) That the facility is in substantial compliance with standards established pursuant to §16-5C-5 of this code, and such other requirements for a license as may be established by rule under this article.

Any license issued by the secretary shall state the maximum bed capacity for which it is issued, the date the license was issued, and the expiration date. Such licenses shall be issued for a period not to exceed 15 months for nursing homes: Provided, That any license in effect for which timely application for renewal, together with payment of the proper fee has been made to the secretary in conformance with the provisions of this article and the rules
issued thereunder, and prior to the expiration date of the license, shall continue in effect until:

(A) Six months following the expiration date of the license; or

(B) The date of the revocation or suspension of the license pursuant to the provisions of this article; or

(C) The date of issuance of a new license, whichever date first occurs.

Each license shall be issued only for the premises and persons named in the application and is not transferable or assignable: *Provided,* That in the case of the transfer of ownership of a facility with an unexpired license, the application by the proposed new owner shall be filed with the secretary no later than 30 days before the proposed date of transfer. Upon receipt of proof of the transfer of ownership, the application shall have the effect of a license for three months. The secretary shall issue or deny a license within three months of the receipt of the proof of the transfer of ownership. Every license shall be posted in a conspicuous place in the nursing home for which it is issued so as to be accessible to and in plain view of all residents of and visitors to the nursing home.

(c) A license is renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee, and contingent upon evidence of compliance with the provisions of this article and rules promulgated hereunder. Any application for renewal of a license shall include a report by the licensee in such form and containing such information as shall be prescribed by the secretary, including a statement of any changes in the name, address, management, or ownership information on file with the secretary. All holders of facility licenses as of the effective date of this article shall include, in the first application for renewal filed thereafter, such
information as is required for initial applicants under the provisions of §16-5C-6(a) of this code.

(d) In the case of an application for a renewal license, if all requirements of §16-5C-5 of this code are not met, the secretary may at his or her discretion issue a provisional license, provided that care given in the nursing home is adequate for resident needs and the nursing home has demonstrated improvement and evidences potential for substantial compliance within the term of the license: Provided, That a provisional license may not be issued for a period greater than six months, may not be renewed, and may not be issued to any nursing home that is a poor performer.

(e) A nonrefundable application fee in the amount of $200 for an original nursing home license shall be paid at the time application is made for the license. Direct costs of initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and shall be received by the secretary prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $15 per bed per year for nursing homes, except the annual rate per bed may be assessed for licenses issued for less than 15 months. Annually, the secretary may adjust the licensure fees for inflation based upon the increase in the consumer price index during the last 12 months. All such license fees shall be due and payable to the secretary, annually, and in the manner set forth in the rules promulgated hereunder. The fee and application shall be submitted to the secretary who shall retain both the application and fee pending final action on the application. All fees received by the secretary under the provisions of this article shall be deposited in accordance with §16-1-13 of this code.

§16-5C-7. Cost disclosure; surety for resident funds.

(a) Each nursing home shall disclose in writing to all residents at the time of admission a complete and accurate
list of all costs which may be incurred by them; and shall notify the residents 30 days in advance of changes in costs. The nursing home shall make available copies of the list in the nursing home’s business office for inspection. Residents may not be liable for any cost not so disclosed.

(b) If the nursing home handles any money for residents within the facility, the licensee or his or her authorized representative shall either: (1) Give a bond; or (2) obtain and maintain commercial insurance with a company licensed in this state in an amount consistent with this subsection and with the surety as the secretary shall approve. The bond or insurance shall be upon condition that the licensee shall hold separately and in trust all residents’ funds deposited with the licensee; shall administer the funds on behalf of the resident in the manner directed by the depositor; shall render a true and complete account to the depositor and the secretary when requested, and at least quarterly to the resident; and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond or obtain insurance in a sum at least 1.25 times the average amount of funds deposited with the nursing home during the nursing home’s previous fiscal year.

This insurance policy shall specifically designate the resident as the beneficiary or payee reimbursement of lost funds. Regardless of the type of coverage established by the facility, the facility shall reimburse, within 30 days, the resident for any losses directly and seek reimbursement through the bond or insurance itself. Whenever the secretary determines that the amount of any bond or insurance required pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any such bond or insurance is impaired by any recovery against the bond or insurance, the secretary may require the licensee to file an additional bond or insurance in such amount as necessary to adequately protect the money of residents being handled.
The provisions of this subsection do not apply if the licensee handles less than $35 per resident per month in the aggregate. Nursing homes certified to accept payment by Medicare and Medicaid must meet the requirements for surety bonds as listed in the applicable federal regulations.

§16-5C-8. Investigation of complaints.

(a) The secretary shall establish rules for prompt investigation of all complaints of alleged violations by nursing homes of applicable requirements of state law or rules, except for such complaints that the secretary determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and for promptly informing the complaint and the nursing home involved of the results of the investigation.

(b) If, after its investigation, the secretary determines that the complaint has merit, the secretary shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy.

(1) A nursing home or licensee adversely affected by an order or citation of a deficient practice issued pursuant to this section may request the independent informal dispute resolution process contained in §16-5C-12a of this code.

(2) No later than 20 working days following the last day of a complaint investigation, the secretary shall transmit to the nursing home a statement of deficiencies committed by the facility. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(c) No nursing home may discharge or in any manner discriminate against any resident, legal representative, or employee for the reason that the resident, legal representative, or employee has filed a complaint or
participated in any proceeding specified in this article. Violation of this prohibition by any nursing home constitutes ground for the suspension or revocation of the license of the nursing home as provided in §16-5C-11 and §16-5C-12 of this code. Any type of discriminatory treatment of a resident, legal representative, or employee by whom, or upon whose behalf, a complaint has been submitted to the secretary, or any proceeding instituted under this article, within 120 days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the nursing home in retaliation for such complaint or action.

§16-5C-9. Inspections.

The secretary and any duly designated employee or agent shall have the right to enter upon and into the premises of any nursing home at any time for which a license has been issued, for which an application for license has been filed with the secretary, or which the secretary has reason to believe is being operated or maintained as a nursing home without a license. If entry is refused by the owner or person in charge of the nursing home, the secretary may apply to the circuit court of the county in which the nursing home is located or the Circuit Court of Kanawha County for a warrant authorizing inspection to conduct the following inspections:

(1) An initial inspection prior to the issuance of a license pursuant to §16-5C-6 of this code;

(2) A license inspection for a nursing home, which shall be conducted at least once every 15 months, if the nursing home has not applied for and received an exemption from the requirement as provided for in this section;

(3) The secretary, by the secretary’s authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to §16-5C-6 of this code, and shall conduct periodic unannounced inspections
thereafter, to determine compliance by the nursing home with applicable rules promulgated thereunder. All facilities shall comply with regulations of the State Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall make all fire, safety, and like inspections. The secretary may provide for such other inspections as the secretary may deem necessary to carry out the intent and purpose of this article. Any nursing home aggrieved by a determination or assessment made pursuant to this section, shall have the right to an administrative appeal as set forth in §16-5C-12 of this code;

(4) A complaint inspection based on a complaint received by the secretary. If, after investigation of a complaint, the secretary determines that the complaint is substantiated, the secretary may invoke any applicable remedies available pursuant to §16-5C-11 of this code.

§16-5C-9a. Exemptions.

(a) The secretary may grant an exemption from a license inspection if a nursing home was found to be in substantial compliance with the provisions of this chapter at its most recent inspection and there have been no substantiated complaints thereafter. The secretary may not grant more than one exemption in any two-year period.

(b) The secretary may grant an exemption to the extent allowable by federal law from a standard survey, only if the nursing home was found to be in substantial compliance with certification participation requirements at its previous standard inspection and there have been no substantiated complaints thereafter.

(c) The secretary may grant an exemption from periodic license inspections if a nursing home receives accreditation by an accrediting body approved by the secretary and submits a complete copy of the accreditation report. The accrediting body shall identify quality of care measures that assure continued quality care of residents. The secretary
may not grant more than one exemption in any two-year period.

(d) If a complaint is substantiated, the secretary has the authority to immediately remove the exemption.

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16-5C-8 and §16-5C-9 of this code shall be in writing and filed with the secretary and shall list all deficiencies in the nursing home’s compliance with the provisions of this article and the rules adopted hereunder.

(1) No later than 10 working days following the last day of the inspection, the director shall transmit to the nursing home a copy of such report and shall specify a time within which the nursing home shall submit a plan for correction of such deficiencies.

(2) Additionally, notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(3) A nursing home adversely affected by an order or citation of a deficient practice issued pursuant to this section may request the independent informal dispute resolution process contained in §16-5C-12a of this code.

(4) The plan submitted by the nursing home shall be approved, rejected, or modified by the director.

(5) The inspectors or the nursing home shall allow audio taping of the exit conference with the expense to be paid by the requesting party.

(b) With regard to a nursing home with deficiencies and upon its failure to submit a plan of correction which is
approved by the director, or to correct any deficiency within
the time specified in an approved plan of correction, the
secretary may assess civil penalties as hereinafter provided
or may initiate any other legal or disciplinary action as
provided by this article: Provided, That any action by the
secretary shall be stayed until federal proceedings arising
from the same deficiencies are concluded.

(c) Nothing in this section may be construed to prohibit
the secretary from enforcing a rule, administratively or in
court, without first affording formal opportunity to make
correction under this section, where, in the opinion of the
secretary, the violation of the rule jeopardizes the health or
safety of residents, or where the violation of the rule is the
second or subsequent such violation occurring during a
period of 12 full months.

(d) Civil penalties assessed against nursing home shall
not be less than $50 nor more than $8,000: Provided, That
the secretary may not assess a penalty under state licensure
for the same deficiency or violation cited under federal law
and may not assess a penalty against a nursing home if the
nursing home corrects the deficiency within 20 days of
receipt of written notice of the deficiency unless it is a repeat
deficiency or the nursing home is a poor performer.

(e) In determining whether to assess a penalty, and the
amount of penalty to be assessed, the secretary shall
consider:

(1) How serious the noncompliance is in relation to
direct resident care and safety;

(2) The number of residents the noncompliance is likely
to affect;

(3) Whether the noncompliance was noncompliance
during a previous inspection;

(4) The opportunity the nursing home has had to correct
the noncompliance; and
(5) Any additional factors that may be relevant.

(f) The range of civil penalties shall be as follows:

(1) For a deficiency which presents immediate jeopardy to the health, safety, or welfare of one or more residents, the secretary may impose a civil penalty of not less than $3,000 nor more than $8,000;

(2) For a deficiency which actually harms one or more residents, the secretary may impose a civil penalty of not less than $1,000 nor more than $3,000;

(3) For a deficiency which has the potential to harm one or more residents, the secretary may impose a civil penalty of not less than $50 nor more than $1,000;

(4) For a repeated deficiency, the secretary may impose a civil penalty of up to 150 percent of the penalties provided in §16-5C-10(f)(1) through §16-5C-10(f)(3) of this code; and

(5) If no plan of correction is submitted as established in this rule, a penalty may be assessed in the amount of $100 a day unless a reasonable explanation has been provided and accepted by the secretary.

(g) The secretary shall assess a civil penalty of not more than $1,000 against an individual who willfully and knowingly certifies a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment. The secretary shall impose a civil penalty of not more than $5,000 against an individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment.

(h) The secretary shall assess a civil penalty of not more than $2,000 against any individual who notifies, or causes to be notified, a nursing home of the time or date on which
an inspection is scheduled to be conducted under this article or under 42 U.S.C.A. §§ 1395 et seq. and 1396 et seq.

(i) If the secretary assesses a penalty under this section, the secretary shall cause delivery of notice of such penalty by personal service or by certified mail. Said notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the secretary assessed the penalty and selected the amount of the penalty.

(j) The secretary shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16-5C-12 of this code within 30 days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of Review’s final order, or which has been affirmed on judicial review, as provided in §16-5C-13 of this code. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the secretary for:

(1) The protection of the health or property of facility residents;

(2) Long-term care educational activities;

(3) The costs arising from the relocation of residents to other nursing homes when no other funds are available; and

(4) In an emergency situation in which there are no other funds available, the operation of a facility pending correction of deficiencies or closure.

(k) The opportunity for a hearing on an action taken under this section shall be as provided in §16-5C-12 of this code.
§16-5C-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements.

(a) The secretary may reduce the bed quota of the nursing home or impose a ban on new admissions, where he or she finds upon inspection of the nursing home that the licensee is not providing adequate care under the nursing home’s existing bed quota, and that reduction in quota or ban on new admissions, or both, would place the licensee in a position to render adequate care. A reduction in bed quota or a ban on new admissions, or both, may remain in effect until the nursing home is determined by the secretary to be in substantial compliance with the rules. In addition, the secretary shall determine that the facility has the management capability to ensure continued substantial compliance with all applicable requirements. The secretary shall evaluate the continuation of the admissions ban or reduction in bed quota on a continuing basis, and may make a partial lifting of the admissions ban or reduction in bed quota consistent with the purposes of this section. If the residents of the facility are in immediate jeopardy of their health, safety, welfare, or rights, the secretary may seek an order to transfer residents out of the nursing home as provided for in §16-5C-11(d) of this code. Any notice to a licensee of reduction in bed quota or a ban on new admissions shall include the terms of such order, the reasons therefor, and a date set for compliance.

(b) The secretary may deny, limit, suspend, or revoke a license issued under this article or take other action as set forth in this section, if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of the secretary of a license issued by the director, or the withdrawal of an
application for a license after it has been filed with the secretary, may not deprive the secretary of the secretary’s authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application, suspending, or revoking the license, or otherwise taking disciplinary action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the secretary, a circuit court in the county in which a facility is located, or in Kanawha County if emergency circumstances occur, may determine that a nursing home’s deficiencies under this article, or under 42 U.S.C.A. §§ 1395 et seq. and 1396 et seq., if applicable, constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

(1) Close the nursing home;

(2) Transfer residents in the nursing home to other nursing homes; or

(3) Appoint temporary management to oversee the operation of the facility and to assure the health, safety, welfare, and rights of the nursing home’s residents, where there is a need for temporary management while:

(A) There is an orderly closure of the facility; or

(B) Improvements are made in order to bring the nursing home into compliance with all the applicable requirements of this article and, if applicable, 42 U.S.C.A. §§ 1395 et seq. and 1396 et seq.

If the secretary petitions a circuit court for the closure of a nursing home, the transfer of residents, or the appointment of temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the secretary and the licensee or operator of the
A circuit court may divest the licensee or operator of possession and control of a nursing home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare, and rights of the residents of the nursing home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home, or to repair or improve the nursing home so as to return it to compliance with applicable requirements, and the power to receive, conserve, and expend funds, including Medicare, Medicaid, and other payments on behalf of the licensee or operator of the nursing home. Priority shall be given to expenditures for current direct resident care or the transfer of residents. Expenditures other than normal operating expenses totaling more than $20,000 shall be approved by the circuit court.

The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home which existed or originated prior to his or her appointment, and is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing home during his or her temporary management. All compensation and per diem costs of the temporary manager shall be paid by the nursing home. The costs for the temporary manager for any 30-day period may not exceed the 75th percentile of the allowable administrator’s salary as reported on the most recent cost report for the nursing home’s peer group as determined by the secretary. The temporary manager shall bill the nursing home for compensation and per diem costs. Within 15 days of receipt of the bill, the nursing home shall pay the bill or contest the
costs for which it was billed to the court. Such costs shall be recoverable through recoupment from future reimbursement from the state Medicaid agency in the same fashion as a benefits overpayment.

The temporary management shall promptly employ at least one person who is licensed as a nursing home administrator in West Virginia.

A temporary management established for the purpose of making improvements in order to bring a nursing home into compliance with applicable requirements may not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures, civil penalties, and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the nursing home.

(e) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning 30 days after receipt of notice of such assessment or 30 days after receipt of the Board of Review’s final order following a hearing, whichever is later. All such assessments against a nursing home that are unpaid shall be added to the nursing home’s licensure fee and may be filed as a lien against the property of the licensee or operator of the nursing home. Funds received from such assessments shall be deposited as funds received in §16-5C-10 of this code.
(f) The opportunity for a hearing on an action by the secretary taken under this section shall be as provided in §16-5C-12 of this code.

§16-5C-12. License denial, limitation, suspension, or revocation.

(a) The secretary shall deny, limit, suspend, or revoke a license issued if the provisions of this article or if the rules promulgated pursuant to this article are violated. The secretary may revoke a nursing home’s license and prohibit all physicians and licensed disciplines associated with that nursing home from practicing at the nursing home location based upon an annual, periodic, complaint, verification, or other inspection and evaluation.

(b) Before any such license is denied, limited, suspended, or revoked, however, written notice shall be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation of a license under this article. If a formal hearing is requested, the applicant or licensee and the secretary shall proceed in accordance with the provisions of §29A-5-1 et seq. of this code.

(d) If a license is denied or revoked as herein provided, a new application for license shall be considered by the secretary if, when, and after the conditions upon which the denial or revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(e) If the license of a nursing home is denied, limited, suspended, or revoked, the administrator or owner or lessor of the nursing home property shall cease to operate the
facility as a nursing home as of the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the nursing home property is responsible for removing all signs and symbols identifying the premises as a nursing home within 30 days. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(f) Upon the effective date of the denial, limitation, suspension, or revocation, the administrator of the nursing home shall advise the secretary and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the secretary. Medications that are purchased or held by a nursing home that is not licensed may be deemed adulterated.

(g) The period of suspension for the license of a nursing home shall be prescribed by the secretary but may not exceed one year.

§16-5C-12a. Independent informal dispute resolution.

(a) A facility or licensee adversely affected by an order or citation of a deficient practice issued pursuant to this article or by a citation issued for a deficient practice pursuant to federal law may request the independent informal dispute resolution process. A facility may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

(b) The secretary shall contract with up to three independent review organizations to conduct an independent informal dispute resolution process for facilities. The independent review organization shall be accredited by the Utilization Review Accreditation Commission.

(c) The independent informal dispute resolution process is not a formal evidentiary proceeding and utilizing the
independent informal dispute resolution process does not waive the facility’s right to a formal hearing.

(d) The independent informal dispute resolution process consists of the following:

(1) No later than 10 working days following the last day of the survey or inspection, or no later than 20 working days following the last day of a complaint investigation, the secretary shall transmit to the facility a statement of deficiencies committed by the facility. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal;

(2) When the facility returns its plan to correct the cited deficiencies to the secretary, the facility may request in writing the independent informal dispute resolution process to refute the cited deficiencies;

(3) Within five working days of receipt of the written request for the independent informal dispute resolution process made by a facility, the secretary shall refer the request to an independent review organization from the list of certified independent review organizations approved by the state. The secretary shall vary the selection of the independent review organization on a rotating basis. The secretary shall acknowledge in writing to the facility that the request for independent review has been received and forwarded to an independent review organization for review. The notice shall include the name and address of the independent review organization.

(4) Within 10 working days of receipt of the written request for the independent informal dispute resolution process made by a facility, the independent review organization shall hold an independent informal dispute resolution conference unless additional time is requested by the facility. Before the independent informal dispute
resolution conference, the facility may submit additional information.

(5) The facility may not be accompanied by counsel during the independent informal dispute resolution conference. The manner in which the independent informal dispute resolution conference is held is at the discretion of the facility, but is limited to:

(A) A desk review of written information submitted by the facility;

(B) A telephonic conference; or

(C) A face-to-face conference held at the facility or a mutually agreed upon location.

(6) If the independent review organization determines the need for additional information, clarification, or discussion after conclusion of the independent informal dispute resolution conference, the director and the facility shall present the requested information.

(7) Within 10 calendar days of the independent informal dispute resolution conference, the independent review organization shall provide and make a determination, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the facility and the director.

(8) If the secretary disagrees with the determination, the secretary may reject the determination made by the independent review organization and shall issue an order setting forth the rationale for the reversal of the independent review organization’s decision to the facility within 10 calendar days of receiving the independent review organization’s determination.

(9) If the secretary accepts the determination, the secretary shall issue an order affirming the independent review organization’s determination within 10 calendar
days of receiving the independent review organization’s determination.

(10) If the independent review organization determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the secretary accepts the determination, the secretary shall transmit a revised statement of deficiencies to the facility within 10 calendar days of the independent review organization’s determination.

(11) Within 10 calendar days of receipt of the secretary’s order and the revised statement of deficiencies, the facility shall submit a revised plan to correct any remaining deficiencies to the secretary.

(e) A facility has 10 calendar days after receipt of the secretary’s order to request a formal hearing for any deficient practice cited under this article. If the facility requests a formal hearing, the secretary and the facility shall proceed in accordance with the provisions of §29A-5-1 et seq. of this code.

(f) Under the following circumstances, the facility is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the secretary within 60 days of the informal hearing order:

(1) If the facility requests a face-to-face conference, the facility shall pay any costs incurred by the independent review organization that exceed the cost of a telephonic conference, regardless of which part ultimately prevails.

(2) If the independent review organization’s decision supports the originally written contested deficiency or adverse action taken by the director, the facility shall reimburse the secretary for the cost charged by the independent review organization. If the independent review organization’s decision supports some of the originally written contested deficiencies, but not all of them, the
facility shall reimburse the secretary for the cost charged by
the independent review organization on a pro rata basis.


(a) Any applicant or licensee who is dissatisfied with
the decision of the formal hearing as a result of the hearing
provided for in §16-5C-12 of this code may, within 30 days
after receiving notice of the decision, petition the Circuit
Court of Kanawha County, in term or in vacation, for
judicial review of the decision.

(b) The court may affirm, modify, or reverse the
decision of the Board of Review and either the applicant,
licensee, or secretary may appeal from the court’s decision
to the Supreme Court of Appeals.

(c) The judgment of the circuit court shall be final unless
reversed, vacated, or modified on appeal to the Supreme
Court of Appeals in accordance with the provisions of
§29A-6-1 et seq. of this code.

§16-5C-14. Legal counsel and services of the department.

(a) Legal counsel and services for the department in all
administrative hearings may be provided by the Attorney
General or a staff attorney and all proceedings in any circuit
court and the Supreme Court of Appeals shall be provided
by the Attorney General, or his or her assistants, or an
attorney employed by the department in proceedings in any
circuit court, by the prosecuting attorney of the county as
well, all without additional compensation.

(b) The Governor may appoint counsel for the
department, who shall perform such legal services in
representing the interests of residents in nursing homes in
matters under the jurisdiction of the secretary as the
Governor shall direct. It shall be the duty of such counsel to
appear for the residents in all cases where they are not
represented by counsel. The compensation of such counsel
shall be fixed by the Governor.
§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever establishes, maintains, or is engaged in establishing or maintaining a nursing home without a license granted under §16-5C-6, or who prevents, interferes with or impedes in any way the lawful enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100, or by confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. Each day of a continuing violation after conviction is considered a separate offense.

(b) The secretary may in his or her discretion bring an action to enforce compliance with this article or any rule or order hereunder whenever it appears to the secretary that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the secretary that any person has aided, abetted or caused, or is aiding, abetting or causing, such an act or practice. Upon application by the secretary, the circuit court of the county in which the conduct has occurred or is occurring, or if emergency circumstances occur the circuit court of Kanawha County, has jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the secretary has refused to grant or renew a license, or has revoked a license required by law to operate or conduct a nursing home, or has ordered a person to refrain from conduct violating the rules of the secretary, and the person has appealed the action of the secretary, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the nursing home or its failure to comply with the order of the
secretary adversely affects the well being or safety of the residents of the nursing home. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the secretary fails to appeal or should the appeal be decided favorably to the secretary, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a nursing home without a license as required by law, or has continued to violate the rules of the secretary.

(c) Any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation, and unless there is a finding that the nursing home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for such injury. In addition, where the deprivation of the right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies is not required prior to commencement of suit under this subsection.

(d) The amount of damages recovered by a resident, in an action brought pursuant to this section, is exempt for purposes of determining initial or continuing eligibility for medical assistance under §9-4-1 et seq. of this code, and may neither be taken into consideration, nor required to be
applied toward the payment or part payment of the cost of medical care or services available under that article.

(e) Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, is void as contrary to public policy.

(f) The penalties and remedies provided in this section are cumulative and are in addition to all other penalties and remedies provided by law.

(g) Nothing in this section or any other section of the code shall limit the protections afforded nursing homes or their health care providers under §55-7b-1 et seq. of this code. Nursing homes and their health care providers shall be treated in the same manner as any other health care facility or health care provider under §55-7b-1 et seq. of this code. The terms “health care facility” and “health care provider” as used in this subsection shall have the same meaning as set forth in §55-7b-2(f) and (g) of this code.

(h) The proper construction of this section and the limitations and provisions of §55-7b-1 et seq. of this code shall be determined by principles of statutory construction.

§16-5C-16. Availability of reports and records.

[Repealed.]

§16-5C-17. Licenses and rules in force.

[Repealed.]

§16-5C-18. Separate accounts for residents’ personal funds; consent for use; records; penalties.

(a) Each nursing home subject to the provisions of this article shall hold in a separate account and in trust each resident’s personal funds deposited with the nursing home.
(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any such nursing home unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each nursing home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the nursing home, including the purpose and payee of each disbursement, and shall render a true account of such record to the resident or his or her representative upon demand and upon termination of the resident’s stay in the nursing home.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in jail not more than one year, or both fined and imprisoned.

(e) Reports provided to review organizations are confidential unless inaccessibility of information interferes with the secretary’s ability to perform his or her oversight function as mandated by federal regulations and this section.

(f) Notwithstanding §16-5C-18(b) of this code or any other provision of this code, upon the death of a resident, any funds remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of said resident: Provided, That if after 30 days there has been no qualification over the decedent resident’s estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, §36-8-1 et seq. of this code.

§16-5C-20. Hospice palliative care required to be offered.

(a) When the health status of a nursing home facility resident declines to the state of terminal illness or when the
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resident receives a physician’s order for “comfort measures only”, the facility shall notify the resident with information about the option of receiving hospice palliative care. If a nursing home resident is incapacitated, the facility shall also notify any person who has been given the authority of guardian, a medical power of attorney, or health care surrogate over the resident, information stating that the resident has the option of receiving hospice palliative care.

(b) The facility shall document that it has notified the resident, and any person who has been given a medical power of attorney or health care surrogate over the resident, information about the option of hospice palliative care and maintain the documentation so that the secretary may inspect the documentation, to verify the facility has complied with this section.

§16-5C-21. Employment restrictions.

All personnel of a nursing home by virtue of ownership, employment, engagement, or agreement with a provider or contractor shall be subject to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act, §16-49-1 et seq. of this code and the rules promulgated pursuant thereto.

§16-5C-22. Jury trial waiver to be a separate document.

(a) Every written agreement containing a waiver of a right to a trial by jury that is entered into between a nursing home and a person for the nursing care of a resident, must have as a separate and stand alone document any waiver of a right to a trial by jury.

(b) Nothing in this section may be construed to require a court of competent jurisdiction to determine that the entire agreement or any portion thereof is enforceable, unenforceable, conscionable, or unconscionable.
AN ACT to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, to authorize that the Secretary of the Department of Health and Human Resources to propose rules related to source water protection plans; and staggering the timeframes of source water protection plan reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9c. Required update or completion of source water protection plans.

(a) An existing public water utility that draws and treats water from a surface water supply source or a surface water influenced groundwater supply source shall submit to the commissioner an updated or completed source water protection plan for each of its public water system plants with such intakes to protect its public water supplies from contamination. Every effort shall be made to inform and engage the public, local governments, local emergency planners, local health departments, and affected residents at all levels of the development of the protection plan.

(b) The completed or updated plan for each affected plant, at a minimum, shall include the following:

(1) A contingency plan that documents each public water utility’s planned response to contamination of its
public surface water supply source or its public surface
water influenced groundwater supply source;

(2) An examination and analysis of the public water
system’s ability to isolate or divert contaminated waters
from its surface water intake or groundwater supply and the
amount of raw water storage capacity for the public water
system’s plant;

(3) An examination and analysis of the public water
system’s existing ability to switch to an alternative water
source or intake in the event of contamination of its primary
water source;

(4) An analysis and examination of the public water
system’s existing ability to close its water intake in the event
the system is advised that its primary water source has
become contaminated due to a spill or release into a stream
and the duration of time it can keep that water intake closed
without creating a public health emergency;

(5) The following operational information for each plant
receiving water supplies from a surface water source:

(A) The average number of hours the plant operates
each day, and the maximum and minimum number of hours
of operation in one day at that plant during the past year;

(B) The average quantities of water treated and
produced by the plant per day, and the maximum and
minimum quantities of water treated and produced at that
plant in one day during the past year;

(6) An analysis and examination of the public water
system’s existing available storage capacity on its system,
how its available storage capacity compares to the public
water system’s normal daily usage and whether the public
water system’s existing available storage capacity can be
effectively utilized to minimize the threat of contamination
to its system;
(7) The calculated level of unaccounted for water experienced by the public water system for each surface water intake, determined by comparing the measured quantities of water which are actually received and used by customers served by that water plant to the total quantities of water treated at the water plant over the past year. If the calculated ratio of those two figures is less than 85 percent, the public water system is to describe all of the measures it is actively taking to reduce the level of water loss experienced on its system;

(8) A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under §29B-1-1 et seq. of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. Disclosure is permitted on any location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern to the extent they are in the public domain through a state or federal agency. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency;

(9) If the public water utility’s water supply plant is served by a single-source intake to a surface water source of supply or a surface water influenced source of supply, the
submitted plan shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:

(A) Constructing or establishing a secondary or backup intake which would draw water supplies from a substantially different location or water source;

(B) Constructing additional raw water storage capacity or treated water storage capacity or both, to provide at least two days of system storage, based on the plant’s maximum level of production experienced within the past year;

(C) Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;

(D) Any other alternative which is available to the public water utility to secure safe and reliable alternative supplies during a period its primary source of supply is unavailable or negatively impacted for an extended period; and

(E) If one or more alternatives set forth in paragraphs (A) through (D), inclusive, of this subdivision is determined to be technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives;

(10) A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the Bureau for Public
Health, local health departments, local emergency responders, local emergency planning committee, and other state, county, or local agencies and organizations to protect its source water supply from contamination, including, but not limited to, notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of other management techniques recommended by the commissioner or included in the source water protection plan;

(11) A communications plan that documents the manner in which the public water utility, working in concert with state and local emergency response agencies, shall notify the local health agencies and the public of the initial spill or contamination event and provide updated information related to any contamination or impairment of the source water supply or the system’s drinking water supply, with an initial notification to the public to occur, in any event, no later than 30 minutes after the public water system becomes aware of the spill, release or potential contamination of the public water system;

(12) A complete and comprehensive list of the potential sources of significant contamination contained within the zone of critical concern, based upon information which is directly provided or can otherwise be requested and obtained from the Department of Environmental Protection, the Bureau for Public Health, the Division of Homeland Security, and Emergency Management and other resources; and

(13) An examination of the technical and economic feasibility of implementing an early warning monitoring system.
(c) A public water utility’s public water system with a primary surface water source of supply or a surface water influenced groundwater source of supply shall submit, prior to the commencement of its operations, a source water protection plan satisfying the requirements of subsection (b) of this section.

(d) The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection. Thereafter, within 180 days of receiving a plan for approval, the commissioner may approve, reject, or modify the plan as may be necessary and reasonable to satisfy the purposes of this article. The commissioner shall consult with the local public health officer and conduct at least one public hearing when reviewing the plan. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

(e) The commissioner may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination identified by the plan, or as otherwise made known to the commissioner.

(f) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall submit an updated source water protection plan at least every three years or when there is a substantial change in the potential sources of significant contamination within the identified zone of critical concern.

(g) The commissioner’s authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of public health.

(h) The secretary is authorized to propose legislative rules for promulgation pursuant to §29A-3-1 et seq. of this code to implement the provisions of this section. The rules
shall include a staggered schedule by hydrologic regions for
the submission of source water protection plans by public
water utilities. The first report submitted pursuant to a
staggered schedule is exempt from the reporting interval set
forth in §16-1-9c(f) of this code. Subsequent reports shall
be submitted pursuant to the provisions of §16-1-9c(f) of
this code.

CHAPTER 218

(Com. Sub. for H. B. 2768 - By Delegate Rohrbach)

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

AN ACT to amend and reenact §16-54-1, §16-54-3, §16-54-4,
§16-54-5, §16-54-6, §16-54-7, and §16-54-8, of the Code of
West Virginia, 1931, as amended, all relating to reducing the
use of certain prescription drugs; defining terms; clarifying
types of examinations; requiring certain information in a
narcotics contract; clarifying that the drug being regulated is
a Schedule II opioid drug; providing exceptions; and requiring
coverage for certain procedures to treat chronic pain.

Be it enacted by the Legislature of West Virginia:

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

As used in this section:

“Acute pain” means a time limited pain caused by a
specific disease or injury.
“Chronic pain” means a noncancer, nonend of life pain lasting more than three months or longer than the duration of normal tissue healing.

“Health care practitioner” or “practitioner” means:

1. A physician authorized pursuant to the provisions of §30-3-1 et seq. and §30-14-1 et seq. of this code;

2. A podiatrist licensed pursuant to the provisions of §30-3-1 et seq. of this code;

3. A physician assistant with prescriptive authority as set forth in §30-3E-3 of this code;

4. An advanced practice registered nurse with prescriptive authority as set forth in §30-7-15a of this code;

5. A dentist licensed pursuant to the provisions of §30-4-1 et seq. of this code;

6. An optometrist licensed pursuant to the provisions of §30-8-1 et seq. of this code;

7. A physical therapist licensed pursuant to the provisions of §30-20-1 et seq. of this code;

8. An occupational therapist licensed pursuant to the provisions of §30-28-1 et seq. of this code;

9. An osteopathic physician licensed pursuant to the provisions of §30-14-1 et seq. of this code; and

10. A chiropractor licensed pursuant to the provisions of §30-16-1 et seq. of this code.

“Insurance provider” means an entity that is regulated under the provisions of §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq. and §33-25A-1 et seq. of this code.

“Office” means the Office of Drug Control Policy.
“Pain clinic” means the same as that term is defined in §16-5H-2 of this code.

“Pain specialist” means a practitioner who is board certified in pain management or a related field.

“Prescribe” means the advisement of a physician or other licensed practitioner to a patient for a course of treatment. It can include but is not limited to medication, services, supplies, equipment, procedures, diagnostic tests, or screening as permitted by the physician or other licensed practitioner’s scope of practice.

“Referral” means the recommendation by a person to another person for the purpose of initiating care by a health care practitioner.

“Schedule II opioid drug” means an opioid drug listed in §60A-2-206 of this code.

“Surgical procedure” means a medical procedure involving an incision with instruments performed to repair damage or arrest disease in a living body.

§16-54-3. Opioid prescription notifications.

Prior to issuing a prescription for a Schedule II opioid drug, a practitioner shall:

(1) Advise the patient regarding the quantity of the Schedule II opioid drug and a patient’s option to fill the prescription in a lesser quantity; and

(2) Inform the patient of the risks associated with the Schedule II opioid drug prescribed.

§16-54-4. Opioid prescription limitations.

(a) When issuing a prescription for a Schedule II opioid drug to an adult patient seeking treatment in an emergency room for outpatient use, a health care practitioner may not issue a prescription for more than a four-day supply:
Provided, That a prescription for a Schedule II opioid drug issued to an adult patient in an emergency room for outpatient use is not considered to be an initial Schedule II opioid prescription.

(b) When issuing a prescription for a Schedule II opioid drug to an adult patient seeking treatment in an urgent care facility setting for outpatient use, a health care practitioner may not issue a prescription for more than a four-day supply: Provided, That an additional dosing for up to no more than a seven-day supply may be permitted, but only if the medical rationale for more than a four-day supply is documented in the medical record.

(c) A health care practitioner may not issue an initial Schedule II opioid drug prescription to a minor for more than a three-day supply and shall discuss with the parent or guardian of the minor the risks associated with Schedule II opioid drug use and the reasons why the prescription is necessary.

(d) A dentist or an optometrist may not issue a Schedule II opioid drug prescription for more than a three-day supply.

(e) A practitioner, other than a dentist or an optometrist, may not issue an initial Schedule II opioid drug prescription for more than a seven-day supply. The prescription shall be for the lowest effective dose which in the medical judgement of the practitioner would be the best course of treatment for this patient and his or her condition.

(f) Prior to issuing an initial Schedule II opioid drug prescription, a practitioner shall:

1. Take and document the results of a thorough medical history, including the patient’s experience with nonopioid medication, nonpharmacological pain management approaches, and substance abuse history;

2. Conduct, as appropriate, and document the results of a physical examination. The physical exam should be
relevant to the specific diagnosis and course of treatment, and should assess whether the course of treatment would be safe and effective for the patient.

(3) Develop a treatment plan, with particular attention focused on determining the cause of the patient’s pain; and

(4) Access relevant prescription monitoring information under the Controlled Substances Monitoring Program Database.

(g) Notwithstanding any provision of this code or legislative rule to the contrary, no medication listed as a Schedule II opioid drug as set forth in §60A-2-206 of this code, may be prescribed by a practitioner for greater than a 30-day supply: Provided, That two additional prescriptions, each for a 30-day period for a total of a 90-day supply, may be prescribed if the practitioner accesses the West Virginia Controlled Substances Monitoring Program Database as set forth in §60A-9-1 et seq. of this code: Provided, however, That the limitations in this section do not apply to cancer patients, patients receiving hospice care from a licensed hospice provider, patients receiving palliative care, a patient who is a resident of a long-term care facility, or a patient receiving medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.

(h) A practitioner is required to conduct and document the results of a physical examination every 90 days for any patient for whom he or she continues to treat with any Schedule II opioid drug as set forth in §60A-2-206 of this code. The physical examination should be relevant to the specific diagnosis and course of treatment, and should assess whether continuing the course of treatment would be safe and effective for the patient.

(i) A veterinarian licensed pursuant to the provisions of §30-10-1 et seq. of this code may not issue an initial Schedule II opioid drug prescription for more than a seven-day supply. The prescription shall be for the lowest effective
dose which in the medical judgment of the veterinarian
would be the best course of treatment for the patient and his
or her condition.

(j) In conjunction with the issuance of the third
prescription for a Schedule II opioid drug, the patient shall
execute a narcotics contract with the prescribing
practitioner. The contract shall be made a part of the
patient’s medical record. The narcotics contract is required
to provide at a minimum that:

(1) The patient agrees only to obtain scheduled
medications from this particular prescribing practitioner;

(2) The patient agrees he or she will only fill those
prescriptions at a single pharmacy which includes a
pharmacy with more than one location;

(3) The patient agrees to notify the prescribing
practitioner within 72 hours of any emergency where he or
she is prescribed scheduled medication;

(4) If the patient fails to honor the provisions of the
narcotics contract, the prescribing practitioner may either
terminate the provider-patient relationship or continue to
treat the patient without prescribing a Schedule II opioid
drug for the patient. Should the practitioner decide to
terminate the relationship, he or she is required to do so
pursuant to the provisions of this code and any rules
promulgated hereunder. Termination of the relationship for
the patient’s failure to honor the provisions of the contract
is not subject to any disciplinary action by the practitioner’s
licensing board; and

(5) If another physician is approved to prescribe to the
patient.

(k) A pharmacist is not responsible for enforcing the
provisions of this section and the Board of Pharmacy may
not discipline a licensee if he or she fills a prescription in
violation of the provisions of this section.
§16-54-5. Subsequent prescriptions; limitations.

(a) After issuing the initial Schedule II opioid drug prescription as set forth in §16-54-4 of this code, the practitioner, after consultation with the patient, may issue a subsequent prescription for a Schedule II opioid drug to the patient if:

1. The subsequent prescription would not be deemed an initial prescription pursuant to §16-54-4 of this code;
2. The practitioner determines the prescription is necessary and appropriate to the patient’s treatment needs and documents the rationale for the issuance of the subsequent prescription; and
3. The practitioner determines that issuance of the subsequent prescription does not present an undue risk of abuse, addiction, or diversion and documents that determination.

(b) Prior to issuing the subsequent Schedule II opioid drug prescription of the course of treatment, a practitioner shall discuss with the patient, or the patient’s parent or guardian if the patient is under 18 years of age, the risks associated with the Schedule II opioid drugs being prescribed. This discussion shall include:

1. The risks of addiction and overdose associated with Schedule II opioid drugs and the dangers of taking Schedule II opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;
2. The reasons why the prescription is necessary;
3. Alternative treatments that may be available; and
4. Risks associated with the use of the Schedule II opioid drug being prescribed, specifically that Schedule II opioid drugs are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or
psychological dependence on the Schedule II opioid drug, and that the risks of taking more opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with opioids, can result in fatal respiratory depression.

(c) The discussion as set forth in §16-54-5(b) of this code shall be included in a notation in the patient’s medical record.

§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.

(a) At the time of the issuance of the third prescription for a Schedule II opioid drug the practitioner shall consider referring the patient to a pain clinic or a pain specialist. The practitioner shall discuss the benefits of seeking treatment through a pain clinic or a pain specialist and provide him or her with an understanding of any risks associated by choosing not to pursue that as an option.

(b) If the patient declines to seek treatment from a pain clinic or a pain specialist and opts to remain a patient of the practitioner, and the practitioner continues to prescribe a Schedule II opioid drug as provided in this code, the practitioner shall:

(1) Note in the patient’s medical records that the patient knowingly declined treatment from a pain clinic or pain specialist;

(2) Review, at a minimum of every three months, the course of treatment, any new information about the etiology of the pain, and the patient’s progress toward treatment objectives and document the results of that review;

(3) Assess the patient prior to every renewal to determine whether the patient is experiencing problems associated with physical and psychological dependence and document the results of that assessment; and
(4) Periodically make reasonable efforts, unless clinically contraindicated, to either stop the use of the controlled substance, decrease the dosage, try other drugs or treatment modalities in an effort to reduce the potential for abuse or the development of physical or psychological dependence, and document with specificity the efforts undertaken.

§16-54-7. Exceptions.

(a) This article does not apply to a patient who is currently in active treatment for cancer, receiving hospice care from a licensed hospice provider or palliative care provider, or is a resident of a long-term care facility.

(b) This article does not apply to a patient being prescribed, or ordered, any medication in an inpatient setting at a hospital.

(c) Notwithstanding the limitations on the prescribing of a Schedule II opioid drug contained in §16-54-4 of this code, a practitioner may prescribe an initial seven-day supply of a Schedule II opioid drug to a post-surgery patient immediately following a surgical procedure. Based upon the medical judgment of the practitioner, a subsequent prescription may be prescribed by the practitioner pursuant to the provisions of this code. Nothing in this section authorizes a practitioner to prescribe any medication which he or she is not permitted to prescribe pursuant to their practice act.

(d) A practitioner who acquires a patient after January 1, 2018, who is currently being prescribed a Schedule II opioid drug from another practitioner is required to access the Controlled Substances Monitoring Program Database as set forth in §60A-9-1 et seq. of this code. The practitioner shall otherwise treat the patient as set forth in this code.

(e) This article does not apply to an existing practitioner-patient relationship established before January 1, 2018, where there is an established and current opioid
treatment plan which is reflected in the patient’s medical records.

§16-54-8. Treatment of pain.

(a) When a patient seeks treatment, a health care practitioner shall refer or prescribe to the patient any of the following treatment alternatives, as is appropriate based on the practitioner’s clinical judgment and the availability of the treatment, before starting a patient on a Schedule II opioid drug: physical therapy, occupational therapy, acupuncture, massage therapy, osteopathic manipulation, chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code.

(b) Nothing in this section should be construed to require that all of the treatment alternatives set forth in §16-54-8(a) of this code are required to be exhausted prior to the patient’s receiving a prescription for a Schedule II opioid drug.

(c) At a minimum, an insurance provider who offers an insurance product in this state, the Bureau for Medical Services, and the Public Employees Insurance Agency shall provide coverage for 20 visits per event of physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, when ordered or prescribed by a health care practitioner.

(d) A person may seek physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, prior to seeking treatment from any other health care practitioner. The licensed health care practitioner providing services pursuant to this section may prescribe within their scope of practice as defined in §16-54-1 of this code. A health care practitioner referral although permitted is not required as a condition of coverage by the Bureau for Medical Services the Public
Employees Insurance Agency, and any insurance provider who offers an insurance product in this state. Any deductible, coinsurance, or copay required for any of these services may not be greater than the deductible, coinsurance, or copay required for a primary care visit.

(e) Nothing in this section precludes a practitioner from simultaneously prescribing a Schedule II opioid drug and prescribing or recommending any of the procedures set forth in §16-54-8(a) of this code.

CHAPTER 219

(Com. Sub. for H. B. 2848 - By Delegates Ellington, Summers, Nelson and Byrd)
[By Request of the State Treasurer]

[Passed March 1, 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 section, designated §11-21-12j; and to amend and reenact §16-48-3 and §16-48-6 of said code, all relating to the West Virginia ABLE Act accounts and the moneys deposited therein; adding and clarifying definitions to conform to federal law; adding an attorney in fact and a parent to the persons authorized to create or manage a West Virginia ABLE accounts as permitted by federal law; amending the age of eligible individuals to conform to federal law; clarifying that a guardian may manage an ABLE account regardless of the amount of a designated beneficiary’s assets and that the Department of Health and Human Resources may not manage an ABLE account; adding a federal employer identification number to the items required in an application; authorizing the maximum account value to be the value established by the state of the program manager contracting with the Treasurer; clarifying that moneys in a West Virginia ABLE account or a
qualified withdrawal are to be disregarded when determining eligibility for or the amount of public assistance unless required by federal law, moneys in an account or a qualified withdrawal are not subject to claims by the Department of Health and Human Resources unless required by federal law, and on the death of a designated beneficiary moneys in an account are transferred to the estate of the designated beneficiary unless prohibited by federal law; and authorizes contributions to West Virginia ABLE accounts to be subtracted from federal adjusted gross income for purposes of West Virginia personal income taxes and the recapture of amounts subtracted if account funds are used for purposes other than a qualified disability expense; and making various technical revisions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12j. Modifications to federal adjusted income.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, any contributions to an account created pursuant to the West Virginia ABLE Act in §16-48-1 et seq. of this code is also an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer’s federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed and shall not reduce taxable income below zero. The taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the payment was made.

(b) In addition to the amounts authorized to be added to federal adjusted gross income pursuant to §11-21-12(b) of this code, unless already included in federal adjusted gross income,
income for the taxable year, there shall be added to federal
adjusted gross income any amount previously deducted
from federal adjusted gross income under this section for
amounts deposited into an account created pursuant to the
West Virginia ABLE Act in §16-48-1 et seq. of this code
and subsequently withdrawn from the account for purposes
other than a qualified disability expense authorized by the
ABLE Act.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 48. WEST VIRGINIA ABLE ACT.


(a) “ABLE Act” means the federal legislation codified
in Section 529A of the Internal Revenue Code of 1986, 26
U.S.C. § 529A, and related treasury regulations, as amended
from time to time. Any references in this article to Section
529A include related treasury regulations.

(b) “Account” or “ABLE savings account” means an
individual savings account established in accordance with
the provisions of this article.

(c) “Account owner” means designated beneficiary as
defined in the ABLE Act.

(d) “Attorney in fact” means a person named in a power
of attorney with the authority to open and manage an
account.

(e) “Conservator” means a person appointed by the
court pursuant to §44A-1-1 et seq. of this code.

(f) “Designated beneficiary” means a West Virginia
resident who owns the account and who was an eligible
individual when the account was established or who
succeeded the former designated beneficiary.

(g) “Eligible individual” means an individual who is
entitled to benefits based on blindness or disability under 42
U.S.C. § 401 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such blindness or disability occurred before the date on which the individual attained the age specified in the ABLE Act, or an individual who filed a disability certification, to the satisfaction of the secretary, with the secretary for such taxable year.

(h) “Financial organization” means an organization authorized to do business in the State of West Virginia and is:

(1) Licensed or chartered by the Insurance Commissioner;

(2) Licensed or chartered by the Commissioner of the Division of Financial Institutions;

(3) Chartered by an agency of the federal government; or

(4) Subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

(i) “Guardian” means a person appointed by the court pursuant to §44A-1-1 et seq. of this code.

(j) “Management contract” means the contract executed by the Treasurer and a financial organization selected to act as a depository and manager of the program.

(k) “Member of the family” has the meaning contained in the ABLE Act.

(l) “Nonqualified withdrawal” means a withdrawal from an account which is not:

(1) A qualified withdrawal; or

(2) A rollover distribution.
(m) “Program” means the West Virginia ABLE Act savings program established pursuant to this article.

(n) “Program manager” means a financial organization selected by the Treasurer to act as a depository and manager of the program.

(o) “Qualified disability expense” means any qualified disability expense included in the ABLE Act.

(p) “Qualified withdrawal” means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(q) “Rollover distribution” means a rollover distribution as defined in the ABLE Act.

(r) “Savings agreement” means an agreement between the program manager or the Treasurer and the account owner.

(s) “Secretary” means the secretary of the United States Treasury.

(t) “Treasurer” means the State Treasurer.

§16-48-6. Establishment of ABLE savings account by designated beneficiary, parent, conservator, guardian or attorney in fact.

(a) Any ABLE savings accounts established pursuant to the provisions of this article shall be opened and managed by a designated beneficiary, or a parent, conservator, guardian or attorney in fact of a designated beneficiary who lacks capacity to enter into a contract and each beneficiary may have only one account. In the absence of a conservator, a guardian may manage an ABLE account regardless of the amount of a designated beneficiary’s personal assets. The Department of Health and Human Resources may not manage an ABLE account. The Treasurer may establish a nonrefundable application fee. An application for such
account shall be in the form prescribed by the Treasurer and contain:

(1) The name, address and social security number of the designated beneficiary;

(2) The name, address and social security number or federal employer identification number of the person or entity opening or managing the ABLE account on behalf of the designated beneficiary;

(3) A certification relating to no excess contributions; and

(4) Any additional information as the Treasurer may require.

(b) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by the ABLE Act.

(c) Contributions to ABLE savings accounts may only be made in cash. The Treasurer or program manager shall reject or promptly withdraw:

(1) Contributions in excess of the limits established pursuant to subsection (b); or

(2) The total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the Treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to §18-30-1 et seq. of this code; or

(B) The designated beneficiary is not an eligible individual in the current calendar year.

(d) (1) An account owner may:
(A) Change the designated beneficiary of an account to an eligible individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the Treasurer; and

(B) Transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in the ABLE Act.

(2) No account owner may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(e) (1) Distributions may be made from the account for payment of any qualified disability expense for the designated beneficiary of the account made in accordance with the provisions of this article.

(2) Any distribution from an account to any individual or for the benefit of any individual during a calendar year shall be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary or the distributee to the extent required by state or federal law.

(3) Statements shall be provided to each account owner at least four times each year within 30 days after the end of the three-month period to which a statement relates. The statement shall identify the contributions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the Treasurer requires to be reported to the account owner.

(4) Statements and information relating to accounts shall be prepared and filed to the extent required by this article and any other state or federal law.

(f) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be
imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLE savings account or a qualified withdrawal:

(A) Are exempt from attachment, execution or garnishment;

(B) Are disregarded for the purposes of determining eligibility for or the amount of a public assistance program, unless required by federal law;

(C) Are not subject to claims by the West Virginia Department of Health and Human Resources unless required by federal law; and

(D) On the death of the designated beneficiary, shall be transferred to the estate of the designated beneficiary, unless prohibited by federal law.

CHAPTER 220

(Com. Sub. for H. B. 2945 - By Delegates Miley, Caputo, Lavender-Bowe, Householder, Nelson and Bates)

[Passed March 9, 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 §16-2-17, relating to temporary food service permits issued by a local or county health departments for selling non-potentially hazardous foods; providing that permits and fees shall be valid for one year; providing a definition of non-potentially hazardous foods; providing that permits and fees shall be valid beyond
the boundaries of the county issuing the permit; providing limitations upon an issued permit to assure compliance; providing that vendors must provide notice to local health departments more than 14 days prior to an event; providing that permits must be visibly posted at the event; and requiring the Secretary to review and modernize legislative rules regarding local boards of health fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-17. Event permit fees good for a year, reciprocity from other state health departments.

(a) A temporary food service permit issued by a local or county health department to an in-state vendor in their county of residence for preparing and selling non-potentially hazardous foods at a festival, scheduled event, or similar activity which is valid for any time period less than annual and any permit fee paid shall be valid for an entire calendar year for the vendor regardless of the length of time for which the first permit is issued and regardless of the number of subsequent festivals, events or activities for which the vendor requires the same permit. Non-potentially hazardous foods mean food that does not require time or temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(b) The permit shall also be valid in the counties that border the vendor’s county of residence or 25 air miles, whichever is greater. No health department within these defined areas may charge a permit fee to any in-state vendor that has received a temporary food service permit to prepare and sell non-potentially hazardous foods by the other in-state health department during the same calendar year for the same type of activity, but may place conditions and limitations upon an issued permit to assure compliance with that health departments rules and standards for the type of permit being issued. Each vendor must provide notice to the
25 local health department with jurisdiction at least 14 days prior to the start of the festival, event or activity. The permit must be visibly posted at the festival, event, or activity or the permit is not valid.

29 (c) The Secretary shall review and modernize legislative rules regarding local boards of health fees located in 64 CSR 30 in the next filing period.

CHAPTER 221

(H. B. 3132 - By Delegate Rohrbach)

[Passed March 8, 2019; in effect ninety days from passage.] [Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §16-5Y-4 of the Code of West Virginia, 1931, as amended, relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment from complying with the legislative rule and exempting licensed behavioral health centers providing office-based medication-assisted treatment from registration requirements but requiring them to attest and provide information to the Office of Health Facilities Licensure and Certification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

(a) No person, partnership, association, or corporation may operate an office-based, medication-assisted treatment
program without first obtaining a registration from the secretary in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(b) Any person, partnership, association, or corporation desiring a registration to operate an office-based, medication-assisted treatment program in this state shall file with the Office of Health Facility Licensure and Certification an application in such form and with such information as the secretary shall prescribe and furnish accompanied by an application fee.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect and review all documentation submitted with the application. The director shall then provide a recommendation to the secretary whether to approve or deny the application for registration. The secretary shall issue a registration if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A registration shall be issued in one of three categories:

(1) An initial 12-month registration shall be issued to an office-based, medication-assisted treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this article and with all rules promulgated pursuant to this article;

(2) A provisional registration shall be issued when an office-based, medication-assisted treatment program seeks a renewal registration, or is an existing program as of the effective date of this article and is seeking an initial registration, and the office-based, medication-assisted treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights,
health, and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be consecutively reissued; or

(3) A renewal registration shall be issued when an office-based, medication-assisted treatment program is in substantial compliance with this article and with all rules promulgated pursuant to this article. A renewal registration shall expire not more than one year from the date of issuance.

(e) At least 60 days prior to the registration expiration date, an application for renewal shall be submitted by the office-based, medication-assisted treatment program to the secretary on forms furnished by the secretary. A registration shall be renewed if the secretary determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A registration issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a registered office-based, medication-assisted treatment program requires submission of a new application. The office-based, medication-assisted treatment program shall notify the secretary of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the secretary.

(f) Any person, partnership, association, or corporation seeking to obtain or renew a registration for an office-based, medication-assisted treatment program in this state must submit to the secretary the following documentation:

(1) Full operating name of the program as advertised;

(2) Legal name of the program as registered with the West Virginia Secretary of State;

(3) Physical address of the program;

(4) Preferred mailing address for the program;
(5) Email address to be used as the primary contact for the program;

(6) Federal Employer Identification Number assigned to the program;

(7) All business licenses issued to the program by this state, the state Tax Department, the Secretary of State, and all other applicable business entities;

(8) Brief description of all services provided by the program;

(9) Hours of operation;

(10) Legal Registered Owner Name – name of the person registered as the legal owner of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal owner separately, indicating the percentage of ownership;

(11) Medical director’s full name, medical license number, Drug Enforcement Administration registration number, and a listing of all current certifications;

(12) For each physician, counselor, or social worker of the program, provide the following:

(A) Employee’s role and occupation within the program;

(B) Full legal name;

(C) Medical license, if applicable;

(D) Drug Enforcement Administration registration number, if applicable;

(E) Drug Enforcement Administration identification number to prescribe buprenorphine for addiction, if applicable; and
(F) Number of hours worked at program per week;

(13) Name and location address of all programs owned or operated by the applicant;

(14) Notarized signature of applicant;

(15) Check or money order for registration fee;

(16) Verification of education and training for all physicians, counselors, and social workers practicing at or used by referral by the program such as fellowships, additional education, accreditations, board certifications, and other certifications; and

(17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber practicing at the program for the three months preceding the date of application.

(g) Upon satisfaction that an applicant has met all of the requirements of this article, the secretary shall issue a registration to operate an office-based, medication-assisted treatment program. An entity that obtains this registration may possess, have custody or control of, and dispense drugs indicated and approved by the United States Food and Drug Administration for the treatment of substance use disorders.

(h) The office-based, medication-assisted treatment program shall display the current registration in a prominent location where services are provided and in clear view of all patients.

(i) The secretary or his or her designee shall perform complaint and verification inspections on all office-based, medication-assisted treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

(j) Any person, partnership, association, or corporation operating an office-based, medication-assisted treatment
program shall be permitted to continue operation until the effective date of the new rules promulgated pursuant to this article. At that time a person, partnership, association, or corporation shall file for registration within six months pursuant to the licensing procedures and requirements of this section and the new rules promulgated hereunder. The existing procedures of the person, partnership, association, or corporation shall remain effective until receipt of the registration.

(k) A person, partnership, association, or corporation providing office-based, medication-assisted treatment to no more than 30 patients of their practice or program is exempt from the registration requirement contained in §16-5Y-4(a) of this code: Provided, That it:

(1) Attests to the Office of Health Facility Licensure and Certification on a form prescribed by the secretary that the person, partnership, association, or corporation requires counselling and drug screens, has implemented diversion control measures, has completed medical education training on addiction treatment encompassing all forms of medication-assisted treatment, will provide patient numbers upon request, and will provide any other information required by the secretary related to patient health and safety; and

(2) Is prohibited from establishing an office-based, medication-assisted treatment at any other location or facility after the submission of an attestation submitted pursuant to §16-5Y-4(k)(2) of this code. This subdivision includes any person, partnership, association, or corporation that has an ownership interest in a partnership, association, or corporation or other corporate entity providing office-based, medication-assisted treatment.

(l) A licensed behavioral health center, pursuant to Behavioral Health Center Licensure, 64 CSR 11, providing office-based medication-assisted treatment is exempt from
the registration requirement contained in §16-5Y-4(a) of this code: Provided, That it:

(1) Attest to the Office of Health Facility Licensure and Certification on a form prescribed by the secretary that the person, partnership, association, or corporation requires counseling and drugs screens, has implemented diversion control measures, will provide patient numbers upon request, and will provide any other information required by the secretary related to patient health and safety; and

(2) Must notify the Office of Health Facility Licensure and Certification prior to establishing or terminating an office-based medication-assisted treatment program at any other licensed behavioral health center location after the submission of an attestation submitted pursuant to §16-5Y-4(l)(1) of this code.

CHAPTER 222

(Com. Sub. for S. B. 345 - By Senators Carmichael (Mr. President) 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 §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14c; and to amend and reenact §29-3-5f and §29-3-8 of said code, all relating generally to accounting and reporting of state grants, distributions, and studies; authorizing commingling of certain funds; imposing authority, duties, and consequences relating to volunteer and part-volunteer fire companies and departments as to state grants and distributions; imposing authority, duties, and
consequences relating to other recipients of state grants; modifying liability for criminal penalties; imposing authority and duties on Legislative Auditor, State Auditor, and State Fire Marshal; clarifying the responsibility for proposing legislative rules; removing requirement for report by State Fire Marshal; and updating outdated language.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


(a) Money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not be commingled with moneys received from any other source, except money received as a grant from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code. Distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund allocated to volunteer and part-volunteer fire companies and departments may be expended only for the following:

1. Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats, and gloves;

2. Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

3. Compliance with insurance service office recommendations relating to fire departments;

*NOTE: This section was also amended by H. B. 2439, which passed prior to this act.*
(4) Rescue equipment, communications equipment, and ambulance equipment: Provided, That no moneys received from the Municipal Pensions and Protection Fund or the Fire Protection Fund may be used for equipment for personal vehicles owned or operated by volunteer or part-volunteer fire company or department members;

(5) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;

(6) Retirement of debts;

(7) Payment of utility bills;

(8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood-borne pathogens: Provided, That the vaccine shall be purchased through the state immunization program or from the lowest-cost vendor available: Provided, however, That volunteer and part-volunteer fire companies and departments shall seek to obtain no-cost administration of the vaccinations through local boards of health: Provided further, That in the event any volunteer or part-volunteer fire company or department is unable to obtain no-cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;

(9) Any filing fee required to be paid to the Legislative Auditor’s Office under §12-4-14 of this code relating to sworn statements of annual expenditures submitted by volunteer or part-volunteer fire companies or departments that receive state funds or grants;

(10) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;
(11) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage, and accounting costs;

(12) Dues paid to national, state, and county associations;

(13) Workers’ compensation premiums;

(14) Life insurance premiums to provide a benefit not to exceed $20,000 for firefighters; and

(15) Educational and training supplies and fire prevention promotional materials, not to exceed $500 per year.

(b) If a volunteer or part-volunteer fire company or department spends any amount of money received from the Municipal Pensions and Protection Fund or the Fire Protection Fund for an item, service, or purpose not authorized by this section, that amount, when determined by an official audit, review, or investigation, shall be deducted from future distributions to the volunteer fire company or part-volunteer fire department.

(c) If a volunteer or part-volunteer fire company or department purchases goods or services authorized by this section, but then returns the goods or cancels the services for a refund, then any money refunded shall be deposited back into the same, dedicated bank account used for the deposit of distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund.

(d) Each volunteer or part-volunteer fire company and department shall retain, for five calendar years, all invoices, receipts, and payment records for the goods and services paid with money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code and
money received as a grant from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

*§12-4-14. Accountability of grantees receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

(a) For the purposes of this section:

(1) “Grantor” means a state spending unit awarding a state grant.

(2) “Grantee” means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

(3) “Report” means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term “report” does not mean a full-scope audit or review of the person receiving state funds.

(4) “State grant” means funding provided by a state spending unit, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term “state grant” does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified

*NOTE: This section was also amended by H. B. 2439, which passed prior to this act.
purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et seq. The term “state grant” does not include formula distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code and does not include money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

(b) (1) Any grantee who receives one or more state grants in the amount of $50,000 or more in the aggregate in a state’s fiscal year shall file with the grantor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, and submitted within the period provided in this section may be substituted for the report.

(2) Any grantee who receives a state grant in an amount less than $50,000 or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures made under the grant.

(3) Reports and sworn statements of expenditures required by this subsection shall be filed within two years of the end of the grantee’s fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to
showing that the state grant funds were spent for the purposes intended when the grant was made.

(c)(1) Any grantee failing to file a required report or sworn statement of expenditures within the two-year period provided in subdivision (3), subsection (b) of this section for state grant funds is barred from subsequently receiving state grants until the grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any grantee failing to file a required report or sworn statement of expenditures within the required period provided in this section to the Legislative Auditor for purposes of debarment from receiving state grants.

(d) (1) The state agency administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors awarding state grants shall, prior to awarding a state grant, take reasonable actions to verify that the grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the grantee seeking the state grant provide a sworn statement from an authorized representative that the grantee has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the Legislative Auditor by the grantor that the grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided in subsection (e) of this section.
(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the Legislative Auditor within 30 days of receipt by the grantor.

(4) The grantor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) The Secretary of the Department of Administration has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code to assist in implementing the provisions of this section.

(e)(1) Any state agency administering a state grant shall, in the manner designated by the Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be disbursed, the identity of the grantee authorized to receive the funds, the grantee’s fiscal year and federal employer identification number, and the purpose and nature of the state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The Legislative Auditor shall maintain a list identifying grantees who have failed to file reports and sworn statements required by this section. The list may be
§12-4-14c. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

(a) Definitions. — For the purposes of this section:

“Equipment and training grant” means a grant of money to a volunteer fire company or a part-volunteer fire department from the Fire Service Equipment and Training Fund created in §29-3-5f of this code;

“Formula distribution” means a distribution of money to volunteer and part-volunteer fire companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code; and

“State funds account” means a bank account established by a volunteer or part-volunteer fire company or department
and maintained for the exclusive use and accounting of
money from formula distributions and equipment and
training grants.

(b) Filing required documentation. — Every volunteer
and part-volunteer fire company or department seeking to
receive formula distributions or an equipment and training
grant shall file copies of bank statements and check images
from the company’s or department’s state funds account for
the previous calendar year with the Legislative Auditor on
or before February 1 of each year.

(c) Reviews and audits. — The Legislative Auditor is
authorized to conduct regular reviews or audits of deposits
and expenditures from formula distribution and equipment
and training grant funds by volunteer and part-volunteer fire
companies or departments. The Legislative Auditor may
assign an employee or employees to perform audits or
reviews at his or her direction. The State Treasurer shall
provide the Legislative Auditor information, in the manner
designated by the Legislative Auditor, concerning formula
distributions and equipment and training grants paid to
volunteer or part-volunteer fire companies and departments.
The volunteer or part-volunteer fire company or department
shall cooperate with the Legislative Auditor, the Legislative
Auditor’s employees, and the State Auditor in performing
their duties under the laws of this state.

(d) State Auditor. — Whenever the State Auditor
performs an audit of a volunteer or part-volunteer fire
company or department for any purpose, the Auditor shall
also conduct an audit of other state funds received by the
company or department pursuant to §33-3-14d, §33-3-33,
and §33-12C-7 of this code. The Auditor shall send a copy
of the audit to the Legislative Auditor. The Legislative
Auditor may accept an audit performed by the Auditor in
lieu of performing an audit under this section.

(e) Withholding of funds. — The Treasurer is authorized
to withhold payment of a formula distribution or an
equipment and training grant from a volunteer or part-volunteer fire company or department, when properly notified by the Legislative Auditor pursuant to this section, of any of the following conditions:

(1) Failure to file, in a timely manner, copies of bank statements and check images with the Legislative Auditor;

(2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;

(3) Misapplication of state funds; or

(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of this code for a state grant other than an equipment and training grant.

(f) Delinquency in filing. — If, after February 1, a volunteer or part-volunteer fire company or department has failed to file the required bank statements and check images with the Legislative Auditor, the Legislative Auditor shall notify the delinquent company or department at two separate times in writing of the delinquency and of possible forfeiture of its Fire Service Equipment and Training Fund distribution for the year. If the required bank statements and check images are not filed with the Legislative Auditor by March 31, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall then notify the Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department. Prior to each subsequent quarterly disbursement of funds by the Treasurer, the Legislative Auditor shall notify each delinquent company or department twice per each quarter in which the company or department is delinquent. The Legislative Auditor may choose the method or methods of notification most likely to be received by the delinquent company or department.

(g) Noncooperation. — If, in the course of an audit or review by the Legislative Auditor, a volunteer or part-
volunteer fire company or department fails to provide documentation of its accounts and expenditures in response to a request of the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department under the provisions of §33-3-14d, §33-3-33, and §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the company or department has cooperated with the review or audit.

(h) Reporting of other grants. — Nothing in this section alters the duties and responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-4-14 of this code if that company or department has received funds from any state grant program other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified by a grantor that a volunteer or part-volunteer fire company or department has failed to file a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor shall notify the State Treasurer who shall withhold further distributions to the company or department in the manner provided in this section.

(i) Escrow and forfeiture of moneys withheld. — The Volunteer Fire Department Audit Account previously created in the Treasury is hereby continued. When the State Treasurer receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the volunteer or part-volunteer fire company or department has come into compliance in less than one year from the date of deposit into this special revenue account, then the Treasurer shall release and distribute the withheld amounts to the company or department, except that any interest that has accrued thereon shall be credited to the
general revenue of the state. If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the company or department, the delinquent company or department forfeits the amounts withheld and the State Treasurer shall pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of this code.

(j) Misuse of state money. — If the Legislative Auditor determines that a volunteer or part-volunteer fire company or department has used formula distribution money for purposes not authorized by §8-15-8b of this code or has used equipment and training grant money for purposes not authorized by the grant program, the Legislative Auditor shall give a written notice of noncompliance to the company or department. If a volunteer or part-volunteer fire company or department disagrees or disputes the finding, the company or department may contest the finding by submitting a written objection to the Legislative Auditor within five working days of receipt of the Legislative Auditor’s finding. The department or company shall then have 60 days from the date of the Legislative Auditor’s finding to provide documentation to substantiate that the expenditures were made for authorized purposes. If the volunteer or part-volunteer fire company or department does not dispute the findings of the Legislative Auditor or if the company or department is not able to substantiate an authorized purpose for the expenditure, the Legislative Auditor shall notify the Treasurer of the amount of misapplied money and the Treasurer shall deduct that amount from future distributions to that company or department until the full amount of unauthorized expenditure is offset.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.
*§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant; reports of ineligibility to State Fire Marshal.*

(a) There is hereby created in the Treasury a special revenue fund to be known as the Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Marshal are authorized from collections. The fund may only be used for the purpose of providing grants to equip volunteer and part-volunteer fire companies and departments and their members, and to train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund.

(b) The State Fire Marshal shall establish a grant program for equipment and training for volunteer and part-volunteer fire companies and departments. Such grant program shall be open to all volunteer and part-volunteer fire companies and departments. In making grants pursuant to this section, the State Fire Marshal shall consider:

1. The number of emergency and nonemergency calls responded to by the company or department;
2. The activities and responses of the company or department;
3. The revenues received by the company or department from federal, state, county, municipal, local, and other sources; and
4. The company’s or department’s assets, expenditures, and other liabilities, including whether the fire company or department has availed itself of available statewide contracts.

(c) The State Fire Marshal shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of

*Note: This section was also amended by H. B. 2439, which passed prior to this act.*
this code to implement the grant program established pursuant to this section.

(d) The Legislative Auditor shall notify the State Fire Marshal of any volunteer or part-volunteer fire company or department that is ineligible to receive grant funds due to the company’s or department’s failure to file required bank statements or financial reports or failure to comply with an audit or review by the Legislative Auditor. A volunteer or part-volunteer fire company or department reported by the Legislative Auditor shall be ineligible to receive funds under this section until the Legislative Auditor notifies the State Fire Marshal that the company or department has come into compliance.


1 On or before July 1, 2019, the State Fire Marshal shall study, prepare, and submit a report to the Joint Committee on Government and Finance regarding reciprocity of firefighter and fire officer certification with other states. Such report shall include recommendations regarding ways to increase availability of reciprocal certification, including any necessary changes to state code or regulation necessary to facilitate additional reciprocity.
AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14b; and to amend and reenact §29-3-5f of said code, all relating to fire service equipment and training funds for volunteer and part-volunteer fire companies and departments; authorizing fire departments to file bank statements and check images instead of sworn statements of expenditures; prohibiting the commingling of funds; requiring retention of payment records; defining terms; changing deadline dates; authorizing forfeiture and redistribution of funds of delinquent fire departments; prohibiting the conversion of funds through returns or refunds of goods or services; providing for deductions from quarterly distributions to offset improper expenditures by a fire company or department; clarifying the responsibility for proposing legislative rules; requiring written notifications of delinquencies and misapplications of funds; providing a procedure to contest findings of Legislative Auditor; removing certain criminal penalties; and updating outdated language.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

(a) Money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not be commingled with moneys received from any other source, except money received as a grant from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code. Distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund allocated to volunteer and part-volunteer fire companies and departments may be expended only for the following:

(1) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats, and gloves;

(2) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(3) Compliance with insurance service office recommendations relating to fire departments;

(4) Rescue equipment, communications equipment, and ambulance equipment: Provided, That no moneys received from the Municipal Pensions and Protection Fund or the Fire Protection Fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;

(5) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;

(6) Retirement of debts;

*NOTE: This section was also amended by S. B. 345, which passed subsequent to this act.*
(7) Payment of utility bills;

(8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood-borne pathogens: Provided, That the vaccine shall be purchased through the state immunization program or from the lowest-cost vendor available: Provided, however, That volunteer and part-volunteer fire companies and departments shall seek to obtain no-cost administration of the vaccinations through local boards of health: Provided further, That in the event any volunteer or part-volunteer fire company or department is unable to obtain no-cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;

(9) Any filing fee required to be paid to the Legislative Auditor’s Office under §12-4-14 of this code relating to sworn statements of annual expenditures submitted by volunteer or part-volunteer fire companies or departments that receive state funds or grants;

(10) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;

(11) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage, and accounting costs;

(12) Dues paid to national, state, and county associations;

(13) Workers’ compensation premiums;

(14) Life insurance premiums to provide a benefit not to exceed $20,000 for firefighters; and

(15) Educational and training supplies and fire prevention promotional materials, not to exceed $500 per year.
(b) If any volunteer fire company or part-volunteer fire department spends any amount of money received from the Municipal Pensions and Protection Fund or the Fire Protection Fund for an item, service, or purpose not authorized by this section, that amount, when determined by an official audit, review, or investigation, shall be deducted from future distributions to the volunteer fire company or part-volunteer fire department.

(c) If any volunteer fire company or part-volunteer fire department purchases goods or services authorized by this section, but then returns the goods or cancels the services for a refund, then any money refunded shall be deposited back into the same, dedicated bank account used for the deposit of distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund.

(d) A volunteer fire company or part-volunteer fire department shall retain, for five calendar years, all invoices, receipts, and payment records for the goods and services paid with money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code and money received as a grant from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

*§12-4-14. Accountability of grantees receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.*

(a) For the purposes of this section:

1 (1) “Grantor” means a state spending unit awarding a state grant.

*NOTE: This section was also amended by S. B. 345, which passed subsequent to this act.*
(2) “Grantee” means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

(3) “Report” means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term “report” does not mean a full-scope audit or review of the person receiving state funds.

(4) “State grant” means funding provided by a state spending unit, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term “state grant” does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et seq. The term “state grant” does not include formula distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code and does not include money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

(b) (1) Any grantee who receives one or more state grants in the amount of $50,000 or more in the aggregate in a state’s fiscal year shall file with the grantor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is
performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, and submitted within the period provided in this section may be substituted for the report.

(2) Any grantee who receives a state grant in an amount less than $50,000 or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures made under the grant.

(3) Reports and sworn statements of expenditures required by this subsection shall be filed within two years of the end of the grantee’s fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

(c)(1) Any grantee failing to file a required report or sworn statement of expenditures within the two-year period provided in subdivision (3), subsection (b) of this section for state grant funds is barred from subsequently receiving state grants until the grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any grantee failing to file a required report or sworn statement of expenditures within the required period provided in this section to the Legislative Auditor for purposes of debarment from receiving state grants.
(d) (1) The state agency administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors awarding state grants shall, prior to awarding a state grant, take reasonable actions to verify that the grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the grantee seeking the state grant provide a sworn statement from an authorized representative that the grantee has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the Legislative Auditor by the grantor that the grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided in subsection (e) of this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the Legislative Auditor within 30 days of receipt by the grantor.

(4) The grantor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) The Secretary of the Department of Administration has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in
accordance with the provisions of §29A-3-1 et seq. of this code to assist in implementing the provisions of this section.

(e)(1) Any state agency administering a state grant shall, in the manner designated by the Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be disbursed, the identity of the grantee authorized to receive the funds, the grantee’s fiscal year and federal employer identification number, and the purpose and nature of the state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The Legislative Auditor shall maintain a list identifying grantees who have failed to file reports and sworn statements required by this section. The list may be in the form of a computerized database that may be accessed by state agencies over the Internet.

(f) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the grantee.

(g) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of §39A-1-1 et seq. of this code.

(h) Any grantee who files a fraudulent sworn statement of expenditures under subsection (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less
than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

§12-4-14b. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

(a) Definitions. — For the purposes of this section:

“Equipment and training grant” means a grant of money to a volunteer fire company or a part-volunteer fire department from the Fire Service Equipment and Training Fund created in §29-3-5f of this code;

“Formula distribution” means a distribution of money to volunteer and part-volunteer fire companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code; and

“State funds account” means a bank account established by a volunteer fire company or a part-volunteer fire department and maintained for the exclusive use and accounting of money from formula distributions and equipment and training grants.

(b) Filing required documentation. — Every volunteer and part-volunteer fire company or department seeking to receive formula distributions or an equipment and training grant shall file copies of bank statements and check images from the company’s or department’s state funds account for the previous calendar year with the Legislative Auditor on or before February 1 of each year.

(c) Reviews and audits. — The Legislative Auditor is authorized to conduct regular reviews or audits of deposits and expenditures from formula distribution and equipment and training grant funds by volunteer and part-volunteer fire companies or departments. The Legislative Auditor may
assign an employee or employees to perform audits or reviews at his or her direction. The State Treasurer shall provide the Legislative Auditor information, in the manner designated by the Legislative Auditor, concerning formula distributions and equipment and training grants paid to volunteer and part-volunteer fire departments. The volunteer fire company or part-volunteer fire department shall cooperate with the Legislative Auditor, the Legislative Auditor’s employees, and the State Auditor in performing their duties under the laws of this state.

(d) State Auditor. — Whenever the State Auditor performs an audit of a volunteer fire department for any purpose, the Auditor shall also conduct an audit of other state funds received by the fire department pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit under this section.

(e) Withholding of funds. — The Treasurer is authorized to withhold payment of a formula distribution or an equipment and training grant from a volunteer or part-volunteer fire company or department, when properly notified by the Legislative Auditor pursuant to this section, of any of the following conditions:

(1) Failure to file, in a timely manner, copies of bank statements and check images with the Legislative Auditor;

(2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;

(3) Misapplication of state funds; or

(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of this code for a state grant other than an equipment and training grant.

(f) Delinquency in filing. — If, after February 1, a volunteer or part-volunteer fire company or department has
failed to file the required bank statements and check images
with the Legislative Auditor, the Legislative Auditor shall
notify the delinquent company or department at two
separate times in writing of the delinquency and of possible
forfeiture of its Fire Service Equipment and Training Fund
distribution for the year. If the required bank statements and
check images are not filed with the Legislative Auditor by
March 31, unless the time period is extended by the
Legislative Auditor, the Legislative Auditor shall then
notify the Treasurer who shall withhold payment of any
amount that would otherwise be distributed to the fire
company or fire department. Prior to each subsequent
quarterly disbursement of funds by the Treasurer, the
Legislative Auditor shall notify each delinquent company or
department twice per each quarter in which the company or
department is delinquent. The Legislative Auditor may
choose the method or methods of notification most likely to
be received by the delinquent company or department.

(g) Noncooperation. — If, in the course of an audit or
review by the Legislative Auditor, a volunteer or part-
volunteer fire company or department fails to provide
documentation of its accounts and expenditures in response
to a request of the Legislative Auditor, the Legislative
Auditor shall notify the State Treasurer who shall withhold
payment of any amount that would otherwise be distributed
to the fire department under the provisions of §33-3-14d,
§33-3-33, and §33-12C-7 of this code until the Legislative
Auditor informs the State Treasurer that the fire department
has cooperated with the review or audit.

(h) Reporting of other grants. — Nothing in this section
alters the duties and responsibilities of a volunteer or part-
volunteer fire company or department imposed under §12-
4-14 of this code if that company or department has received
funds from any state grant program other than from the Fire
Service Equipment and Training Fund. If the Legislative
Auditor is notified by a grantor that a fire company or
department has failed to file a report or a sworn statement
of expenditures for a state grant it received, the Legislative Auditor shall notify the State Treasurer who shall withhold further distributions to the company or department in the manner provided in this section.

(i) Escrow and forfeiture of moneys withheld. — The Volunteer Fire Department Audit Account previously created in the Treasury is hereby continued. When the State Treasurer receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the volunteer or part-volunteer fire company or department has come into compliance in less than one year from the date of deposit into this special revenue account, then the Treasurer shall release and distribute the withheld amounts to the fire company or department, except that any interest that has accrued thereon shall be credited to the general revenue of the state. If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the fire department, the delinquent fire company or fire department forfeits the amounts withheld and the State Treasurer shall pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of this code.

(j) Misuse of state money. — If the Legislative Auditor determines that a volunteer or part-volunteer fire department or company has used formula distribution money for purposes not authorized by §8-15-8b of this code or has used equipment and training grant money for purposes not authorized by the grant program, the Legislative Auditor shall give a written notice of noncompliance to the department or company. If a volunteer or part-volunteer fire department or company disagrees or disputes the finding, the fire department or company may contest the finding by submitting a written objection to the
NOTE: This section was also amended by S. B. 345, which passed subsequent to this act.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant.

(a) There is hereby created in the Treasury a special revenue fund to be known as the Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Marshal are authorized from collections. The fund may only be used for the purpose of providing grants to equip volunteer and part-volunteer fire companies and departments and their members, and to train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund.

(b) The State Fire Marshal shall establish a grant program for equipment and training for volunteer and part-volunteer fire companies and departments. Such grant program shall be open to all volunteer and part-volunteer
fire companies and departments. In making grants pursuant
to this section, the State Fire Marshal shall consider:

(1) The number of emergency and nonemergency calls
responded to by the department;

(2) The activities and responses of the department;

(3) The revenues received by the department from
federal, state, county, municipal, local, and other sources;
and

(4) The department’s assets, expenditures, and other
liabilities, including whether the fire company or
department has availed itself of available statewide
contracts.

(c) The State Fire Marshal shall propose legislative rules
for promulgation in accordance with §29A-3-1 et seq. of
this code to implement the grant program established
pursuant to this section.

(d) The Legislative Auditor shall notify the State Fire
Marshal of any volunteer or part-volunteer fire company or
department that is ineligible to receive grant funds due to
the department’s failure to file required bank statements or
financial reports or failure to comply with an audit or review
by the Legislative Auditor. A fire company or fire
department reported by the Legislative Auditor shall be
ineligible to receive funds under this section until the
Legislative Auditor notifies the State Fire Marshal that the
company or department has come into compliance.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-3D-1, §15-3D-2, §15-3D-3, §15-3D-4, §15-3D-5, §15-3D-6, §15-3D-7, and §15-3D-8, all relating generally to missing and unidentified persons investigations; establishing a short title; declaring legislative findings; defining terms; detailing actions that must be taken by law-enforcement agencies following the receipt of a missing persons complaint and during a missing persons investigation; detailing actions that must be taken by medical examiners and law-enforcement agencies related to identification of human remains; requiring the timely notification to family members of identification of human remains; requiring submission of information to certain national and state databases; and creating a misdemeanor offense of knowingly and willfully filing a false missing persons report with a law-enforcement agency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-1. Short title.

This article shall be known and may be cited as the Missing Persons Act.

§15-3D-2. Findings.

The Legislature finds that:
(1) The ability of law-enforcement agencies to rapidly respond in the hours following the discovery that an individual is missing is a crucial factor in the likelihood that the person will ultimately be located and recovered. The prompt communication of detailed information to the public through emergency broadcast systems and media outlets, including through social media platforms and missing persons databases, can be one of the most effective tools in a missing persons investigation.

(2) A number of national and state-level databases are available to allow law-enforcement agencies and medical examiners to electronically share key information with other law-enforcement agencies and the public related to the investigation of a missing person or unidentified human remains.

(3) In light of technological developments, it is imperative that all law-enforcement agencies in West Virginia follow certain minimum procedures for responding to missing persons complaints and submit key information to national and state-level databases in a timely manner.


For the purposes of this article:

(1) “CODIS” means the Federal Bureau of Investigation’s Combined DNA Index System, which allows for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. The term “CODIS” includes the National DNA Index System or NDIS, administered and operated by the Federal Bureau of Investigation.

(2) “Complainant” means a person who contacts law enforcement to report that a person is missing.

(3) “Electronic communication device” means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband
personal communication device, two-way messaging device, electronic game, or portable computing device.

(4) “Juvenile” means any person under 21 years of age.

(5) “Law-enforcement agency” means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

(6) “Lead law-enforcement agency” means the law-enforcement agency that initially receives a missing persons complaint or, after the fulfillment of all requirements of this article related to the initial receipt of a missing persons complaint and transmission of information to required databases, the law-enforcement agency with the primary responsibility for investigating a missing or unidentified persons complaint.

(7) “Missing person” means any person who is reported missing to a law-enforcement agency.

(8) “NamUs” means the database of the National Missing and Unidentified Persons System.

(9) “NCIC” means the database of the National Crime Information Center, the nationwide, online computer telecommunications system maintained by the Federal Bureau of Investigation to assist authorized agencies in criminal justice and related law-enforcement objectives.

(10) “NCMEC” means the database of the National Center for Missing and Exploited Children.

(11) “Unidentified person” means any person, living or deceased, who has not been identified through investigation for over 30 days.

(12) “Violent Criminal Apprehension Program” or “ViCAP” is a unit of the Federal Bureau of Investigation
responsible for the analysis of serial violent and sexual crimes.

(13) “WEAPON system” means the West Virginia Automated Police Network.


(a) Complaint requirements. — A person may file a missing persons complaint with any law-enforcement agency having jurisdiction. The law-enforcement agency shall attempt to collect the following information from a complainant:

(1) The missing person’s name;

(2) The missing person’s date of birth;

(3) The missing person’s address;

(4) The missing person’s identifying characteristics, including, but not limited to: Birthmarks, moles, tattoos, scars, height, weight, gender, race, current hair color, natural hair color, eye color, prosthetics, surgical implants, cosmetic implants, physical anomalies, and blood type;

(5) A description of the clothing the missing person was believed to have been wearing when he or she went missing and any items that might be with the missing person, such as jewelry, accessories, shoes, or any other distinguishing garments or items;

(6) The date of the last known contact with the missing person;

(7) The missing person’s driver’s license and Social Security number, or any other numbers related to other forms of identification;

(8) A recent photograph of the missing person;
(9) Information related to the missing person’s electronic communication devices or electronic accounts, such as cell phone numbers, social networking login information, and email addresses and login information;

(10) Any circumstances that the complainant believes may explain why the person is missing;

(11) The name and location of the missing person’s school or employer;

(12) The name and location of the missing person’s dentist or primary care physician;

(13) A description of the missing person’s possible means of transportation, including make, model, color, license, and identification number of a vehicle;

(14) Any identifying information related to a known or possible abductor, or the person last seen with the missing person, including the person’s name, physical description, date of birth, identifying physical marks, a description of the person’s possible means of transportation, including the make, model, color, license, and identification number of the person’s vehicle, and any known associates;

(15) The name of the complainant and his or her relationship to the missing person; and

(16) Any additional information considered relevant by either the complainant or the law-enforcement agency.

(b) *High-risk determination; requirements.* —

(1) Upon initial receipt of a missing persons report, the lead law-enforcement agency shall immediately assess whether facts or circumstances indicate that the person meets any of the following risk indicators, which, if applicable, will be entered into NCIC:
(A) The person is or was likely involved in a natural
disaster;

(B) The person is a juvenile, or was a juvenile when he
or she went missing;

(C) The person is likely endangered;

(D) The person has mental or physical disabilities;

(E) The disappearance is believed to have been the result of abduction or kidnapping, or was otherwise involuntary;

(F) The person is under the age of 21 and declared emancipated by the laws of his or her state of residence; and

(G) None of the criteria in paragraphs (A) through (E), inclusive, of this subdivision apply, but additional facts support a reasonable concern for the person’s safety.

(2) If, upon assessment, the lead law-enforcement agency determines that the missing person meets one of the classifications in subdivision (1) of this subsection, the lead law-enforcement agency shall:

(A) Immediately notify the terminal operator responsible for WEAPON system entries for the law-enforcement agency and provide the operator with all relevant information collected from the missing persons complainant as soon as possible. The terminal operator will enter all information into the WEAPON system and submit the information to the West Virginia State Police communications section. If the law-enforcement agency does not have an agreement with a local terminal agency, then the law-enforcement agency will contact the West Virginia State Police terminal agency for that particular area and request that the West Virginia State Police enter the information into the WEAPON system. Once the missing persons complaint has been entered into the WEAPON system, the West Virginia State Police communications
section shall immediately notify all law-enforcement agencies within the state and surrounding region by means of the WEAPON system with all information that will promote efforts to promptly locate and safely recover the missing person. Local law-enforcement agencies that receive the notification of a missing persons complaint shall notify all officers to be on the lookout for the missing person or a suspected abductor; and

(B) Immediately, and no later than two hours, after the determination that a juvenile is missing, take appropriate steps to ensure that the case is entered into the NCIC database with a photograph and other applicable information related to that missing person.

(c) General requirements. —

(1) The lead law-enforcement agency shall take appropriate steps to ensure that all relevant information related to a missing persons complaint is submitted in a timely manner to the WEAPON system, and as applicable, NCIC, CODIS, NDIS, NamUs, and NCMEC. Any information that the West Virginia State Police obtains from these databases must be provided to the lead law-enforcement agency and to other law-enforcement agencies who may come in contact with or be involved in the investigation or location of a missing person.

(2) The lead law-enforcement agency or the West Virginia State Police shall submit any available DNA profiles that may aid in a missing persons investigation and that have not already been submitted by a medical examiner into appropriate DNA databases, including, but not limited to, NamUs.

(d) Removal upon location of person. — Upon the determination that the person is no longer missing, the lead law-enforcement agency or the West Virginia State Police shall immediately remove or request the removal of all
records of the missing person from all missing persons databases.

§15-3D-5. Missing persons investigation requirements.

(a) A law-enforcement agency may not delay an investigation of a missing persons complaint on the basis of a written or unwritten policy requiring that a certain period of time pass after any event, including the receipt of a complaint, before an investigation may commence.

(b) A law-enforcement agency may not refuse to accept a missing person report over which it has investigatory jurisdiction.

(c) A law-enforcement agency is not required to obtain written authorization before publicly releasing any photograph that would aid in the location or recovery of a missing person.

(d) A lead law-enforcement agency shall notify the complainant, a family member, or other person in a position to assist in efforts to locate the missing person of the following:

(1) Whether additional information or materials would aid in the location of the missing person, such as information related to credit or debit cards the missing person may have access to, other banking information, or phone or computer records;

(2) That any DNA samples requested for the missing persons investigation are requested on a voluntary basis, to be used solely to help locate or identify the missing person and will not be used for any other purpose; and

(3) Any general information about the handling of the investigation and the investigation’s progress, unless disclosure would adversely affect the ability to locate or protect the missing person, or to apprehend or prosecute any person criminally involved in the person’s disappearance.
(e) A law-enforcement agency may provide informational materials through publications, or other means, regarding publicly available resources for obtaining or sharing missing persons information.

(f) Lead law-enforcement agencies shall make use of all available and applicable tools, resources, and technologies to resolve a missing persons investigation, including but not limited to:

(1) Assistance from other law-enforcement agencies, whether at a local, state, or federal level;

(2) Nonprofit search and rescue organizations, which may provide trained animal searches, use of specialized equipment, or man trackers;

(3) Cell phone triangularization and tracking services;

(4) Subpoenas of cell phone, land line, Internet, email, and social networking website records; and

(5) Services of technology experts to examine any available information collected from a computer or communications device belonging to or used by the missing person.

(g) If a person remains missing for 30 days after the receipt of a missing persons complaint or the date on which the person was last seen, whichever occurs earlier, the lead law-enforcement agency shall attempt to obtain the following information:

(1) DNA samples from family members and the missing person, along with any necessary authorizations to release such information. All DNA samples obtained in a missing persons investigation shall be immediately forwarded to an appropriate laboratory for analysis;

(2) Any necessary written authorization to release the missing person’s medical and dental records, including any
available x-rays, to the lead law-enforcement agency. If no family or next of kin exists or can be located, the lead law-enforcement agency may execute a written declaration, stating that an active investigation seeking to locate the missing person is being conducted and that the records are required for the exclusive purpose of furthering the investigation. The written declaration, signed by the supervising or chief officer of the law-enforcement agency, is sufficient authority for a health care practitioner to immediately release the missing person’s x-rays, dental records, dental x-rays, and records of any surgical implants to the law-enforcement agency;

(3) Additional photographs of the missing person that may aid the investigation; and

(4) Fingerprints of the missing person.

(h) Nothing in this section precludes a law-enforcement agency from attempting to obtain the materials identified in subsection (g) of this section before the expiration of the 30-day period.

§15-3D-6. Reporting and handling of unidentified human remains.

(a) If a law-enforcement officer or other official discovers or comes into custody of unidentified human remains, the officer or official shall immediately notify the office of the Chief Medical Examiner of the location of those remains. After a law-enforcement agency performs an appropriate death scene investigation with the assistance of the Chief Medical Examiner or county medical examiner, unidentified human remains shall remain in the custody of the office of the Chief Medical Examiner or the county medical examiner pursuant to the requirements of §61-12-3 of this code.

(b) If a law-enforcement officer or other official is uncertain whether materials he or she discovers or comes into custody of are human remains, the officer or official
shall immediately notify and seek the assistance of the office of the Chief Medical Examiner.


(a) The Chief Medical Examiner or county medical examiner, whichever is applicable, shall make reasonable attempts to promptly identify unidentified human remains, by:

(1) Taking photographs of the human remains, prior to an autopsy;

(2) Performing dental or skeletal x-rays, when possible;

(3) Taking photographs of items found with the human remains;

(4) Obtaining fingerprints from the remains, when possible;

(5) Taking samples of tissue suitable for DNA typing, when obtainable;

(6) Taking samples of whole bone or hair, or both, when obtainable and suitable for DNA typing; and

(7) Collecting any other information or materials that may support identification efforts.

(b) A medical examiner or any other person may not dispose of, or materially alter, unidentified human remains before:

(1) Any obtainable DNA samples have been collected that are suitable for DNA identification archiving;

(2) Photographs of the unidentified person or human remains have been taken; and

(3) All other appropriate methods of identification have been exhausted.
(c) A medical examiner shall make reasonable efforts to obtain prompt DNA analysis of biological samples from unidentified human remains if the human remains have not been identified by other means within 30 days.

(d) A medical examiner shall seek available support from appropriate state and federal agencies in efforts to identify human remains including, but not limited to, mitochondrial or nuclear DNA testing services, federal grants for DNA testing, or federal grants for laboratory or medical examiner office improvement.

(e) The medical examiner shall promptly submit all available information that may aid in the identification of human remains to NamUs and to the West Virginia State Police, for entry into all other appropriate law-enforcement databases.

(f) When human remains have been identified as belonging to a missing person, the medical examiner shall promptly notify the lead law-enforcement agency, or if the lead law-enforcement agency is unknown, the West Virginia State Police that the missing person’s remains have been identified.

(g) As soon as possible, the lead law-enforcement agency shall make and document efforts to locate family members of the deceased person to inform them of the death and location of the remains of their family member, unless disclosure of such information would compromise a criminal investigation into a missing person’s death.

(h) Nothing in this article shall be interpreted to preclude the West Virginia State Police or any other law-enforcement agency from pursuing additional efforts to identify human remains, including efforts to publicize information, descriptions, or photographs that may aid in the identification of the remains.
§15-3D-8. Filing a false missing persons complaint; criminal penalties.

A person who knowingly and willfully files a false missing persons complaint 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.

CHAPTER 225

(Com. Sub. for S. B. 356 - By Senators Weld, Clements, Maroney, Cline and Swope)

[Passed February 21, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-1-7, relating generally to compliance with judicial discovery requirements in state and federal criminal cases; requiring the Department of Military Affairs and Public Safety and the agencies therewithin to provide to state and federal prosecutors information regarding certain past or present employees called as witnesses for the prosecution who have been previously determined to have engaged in conduct which might reasonably constitute impeachment evidence; requiring disclosure of the employee’s name to the prosecuting attorney or United States attorney; limiting the department’s or agency’s responsibilities to those circumstances wherein the department or agency is on notice that the employee has been subpoenaed or is to be called as a prosecution witness; clarifying that the responsibilities imposed by this section upon the department or agency are met by transmittal of the name to the prosecuting attorney or attorney for the United States; granting immunity to the department and agencies for
good faith compliance with the requirement to provide information; and clarifying that the immunity granted by the section is in addition to any other immunities granted under law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS; GENERAL PROVISIONS.

§15A-1-7. Compliance with requests for personnel information.

(a) Notwithstanding any provision of this code or any rule promulgated thereunder to the contrary, when the Department of Military Affairs and Public Safety or any agency within the department is placed on notice that a past or current employee has been subpoenaed or is to be called as a witness in a criminal proceeding on behalf of the state or federal government, the department, or agency, and the employee has, to the departments’ or agencies’ knowledge, previously been determined to have engaged in conduct reflecting dishonesty, moral turpitude, bias, prejudice, or other conduct which might reasonably be deemed to constitute impeachment evidence, the department or agency shall provide the name of the employee to the prosecuting attorney or United States attorney representing the state or the United States in the prosecution.

(b) The responsibilities of the department and agencies imposed by this section are met by transmittal of the employee name to the prosecuting attorney or attorney for the United States.

(c) The Department of Military Affairs and Public Safety and all its officers and employees are immune from any and all liability arising from the good faith release of information under the provisions of this section. The immunity granted by this section shall be in addition to any other immunity now existing or granted under any other provision of this code or common law.
AN ACT to repeal §15-9A-1, §15-9A-2, §15-9A-3, and §15-9A-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §15A-2-1 and §15A-2-3 of said code; and to amend said code by adding thereto two new sections, designated §15A-2-4 and §15A-2-5, all relating to the Division of Administrative Services; designating division as staffing agency for certain agencies; providing that division perform executive and administrative support services for certain agencies; designating the division as the state administrative agency responsible for criminal justice and juvenile justice systems; providing exception; providing that code references to the Division of Justice and Community Services are to be construed as references to Division of Administrative Services; transferring employees of Division of Justice and Community Services to Division of Administrative Services; enumerating duties of director of division; requiring legislative rulemaking; and providing for posting of human trafficking assistance notices.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.

§15-9A-1. Legislative findings.
§15-9A-2. Division established; appointment of director.


CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

ARTICLE 2. DIVISION OF ADMINISTRATIVE SERVICES.

§15A-2-1. Division of Administrative Services.

(a) The Division of Administrative Services is created within the department to perform the administrative services for identified agencies within the department.

(b) The Division of Administrative Services shall provide fiscal services, payroll services, human resources services, and procurement services for the Division of Corrections and Rehabilitation, created in §15A-3-1 et seq. of this code, and any other agencies or boards required by the secretary: Provided, That the secretary may not require the administrative services of the State Police, the West Virginia National Guard, or the West Virginia Military Authority be provided by the Division of Administrative Services. The division is the designated staffing agency for, and shall provide executive and administrative support to, the Governor’s Committee on Crime, Delinquency, and Correction, and all of its subcommittees, in the coordination of planning for the criminal justice system and administering federal and state grant programs assigned to it by the actions of the Governor or Legislature.
(c) The State Police, the West Virginia National Guard, and the West Virginia Military Authority may elect to utilize the services of the Division of Administrative Services. The Director of the Division of Administrative Services is authorized to enter into a memorandum of understanding with the head of the State Police, the West Virginia National Guard, or the West Virginia Military Authority to effectuate this utilization.

(d) The division may apply for grants and other funding from federal or state programs, foundations, corporations, and organizations which funding is consistent with its responsibilities and the purposes assigned to it or the subcommittees it staffs. The Division of Administrative Services is hereby designated as the state administrative agency responsible for criminal justice and juvenile justice systems, and various component agencies of state and local government, for the planning and development of state programs and grants which may be funded by federal, state, or other allocations in the areas of public safety, community corrections, law-enforcement training and compliance, sexual assault forensic examinations, victim services, human trafficking, and juvenile justice unless such administration has been specifically entrusted to another state agency by the Legislature. The division is empowered to comply with all regulations and requirements to qualify for such grants funded by federal, state, or other allocations and to administer such funds.

(e) Notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Director of the Division of Justice and Community Services, it shall be construed to mean the Director of the Division of Administrative Services. Whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Justice and Community Services, it shall be construed to mean the Division of Administrative Services.
§15A-2-3. Transfer of employees; continuation of programs; transfer of equipment and records; protection.

(a) All persons employed by the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, or the Division of Corrections whose employment responsibilities include those to be provided by the Division of Administrative Services are assigned and transferred to the Division of Administrative Services. Effective July 1, 2019, all persons employed on the effective date of this article by the Division of Justice and Community Services whose current employment responsibilities include those to be provided by the Division of Administrative Services are hereby assigned and transferred to the Division of Administrative Services.

(1) The Division of Administrative Services shall assume all responsibilities of the administrative services sections of the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, and the Division of Corrections, including those related to ongoing programs, benefits, litigations, or grievances.

(2) All equipment and records necessary to effectuate the purposes of this article shall be transferred to the Division of Administrative Services.

(b) Any person transferred to the office of the Director of the Division of Administrative Services who is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee. Any person transferred to the office of the Director of the Division of Administrative Services who is a classified exempt civil service employee, other than the director, and his or her deputy directors, and one exempt assistant, shall, within the limits contained in §29-6-1 et seq. of this code, be transferred into the civil service system as a permanent covered employee, and is no longer exempt: Provided, That any transferred employee that has been employed in his or
her position for less than the required probationary period must first complete the probationary period prior to becoming a permanent covered employee.

§15A-2-4. Criminal justice and grant administration.

(a) The director shall:

1. Carry out the specific duties imposed on the Governor’s Committee on Crime, Delinquency, and Correction under the provisions of §15-9-1 et seq. of this code, §30-29-1 et seq. of this code, and §62-11C-1 et seq. of this code;

2. Maintain appropriate liaison with federal, state, and local agencies and units of government, or combinations thereof, in order that all programs, projects, and activities for strengthening and improving law enforcement, public safety, and the administration of criminal justice may function effectively at all levels of government;

3. Seek sources of federal grant assistance programs that may benefit the state when authorized by the Governor and manage the dispersal of those funds through grant contracts to subgrantees in a manner consistent with state and federal law and with sound and accountable management practices for the efficient and effective use of public funds;

4. Seek sources of program or grant assistance from foundations, corporations, and organizations which funding is consistent with its responsibilities and the purposes assigned to the director, the Governor’s Committee on Crime, Delinquency, and Correction, and any of its subcommittees; and

5. Serve as the Executive Director of the Governor’s Committee on Crime, Delinquency, and Correction and its subcommittees: Provided, That notwithstanding any provision of this code or a rule promulgated thereunder to the contrary, appeals to the Governor’s Committee on
Crime, Delinquency, and Correction from an individual who has been denied entry into an entry level law-enforcement certification program, a trainee who has not been allowed to continue in the entry level law-enforcement training process, an officer who has made application for his or her law-enforcement certification to be reactivated and that application has been denied, or an officer or individual whose law-enforcement certification as a law enforcement officer or as an instructor has been denied, suspended, or decertified, pursuant to a final decision of the Law-Enforcement Professional Standards Subcommittee established by §30-29-2 of this code, shall be heard by the Deputy Secretary of the Department of Military Affairs and Public Safety or his or her designee.

(b) In discharging these duties, the director may:

(1) Work to bridge gaps between federal, state, and local units of government, as well as private/nonprofit organizations and the general public;

(2) Provide staff assistance in the coordination of all facets of the criminal and juvenile justice systems on behalf of the Governor’s Committee on Crime, Delinquency, and Correction, including, but not limited to, law enforcement, jails, corrections, community corrections, juvenile justice, sexual assault forensic examinations, and victim services;

(3) Acquire criminal justice resources and coordinate the allocation of these resources to state, local, and not-for-profit agencies;

(4) Maintain a web-based database for all community corrections programs;

(5) Collect, compile, and analyze crime and justice data in the state, generating statistical and analytical products for criminal justice professionals and policy makers to establish a basis for sound policy and practical considerations for the criminal justice system, make such recommendations for
system improvement as may be warranted by such research, and contract with other persons, firms, corporations, or organizations to assist in these responsibilities; and

(6) Receive and disburse federal and state grants and funding received from foundations, corporations, or other entities.

(c) Nothing in this article authorizes the division to undertake direct operational responsibilities in law enforcement or the administration of criminal justice.

(d) The director shall propose legislative rules for legislative approval pursuant to §29A-3-1 et seq. of this code which may be necessary to fulfill the functions and responsibilities of this article and the Governor’s Committee on Crime, Delinquency, and Correction. All legislative rules and policies of the former Division of Justice and Community Services shall be transferred to the Division of Administrative Services and remain effective until amended or terminated pursuant to the provisions of §29A-3-1 et seq. of this code by the Division of Administrative Services: Provided, That these rules shall expire on July 1, 2022, if not superseded sooner.

§15A-2-5. Human trafficking assistance notices.

(a) For the purpose of assisting victims of human trafficking to obtain help and services, the following businesses and establishments shall post a notice which meets the requirements of this section:

(1) All locations licensed by the Alcohol Beverage Control Commissioner that permit on-premises consumption of alcoholic beverages, pursuant to §60-7-1 et seq. of this code;

(2) Exotic entertainment facilities, which are facilities featuring live nude dancing, nude service personnel, or live nude entertainment;
(3) Primary airports;
(4) Passenger rail stations;
(5) Bus stations;
(6) Locations where gasoline and diesel fuel are sold;
(7) Emergency departments within hospitals;
(8) Urgent care centers;
(9) Locations at which farm labor contractors and day haulers work, if a physical facility is available at those locations, upon or in which notice can be posted;
(10) Privately operated job recruitment centers;
(11) Rest areas located along interstate highways in this state operated by the Division of Highways;
(12) Hotels; and
(13) Any other business or establishment that the director determines, by legislative rule, is an effective location to provide notice to victims of human trafficking.

(b) Requirements for posting of notice. — The notice required by this section must be posted in English, Spanish, and any other language determined by legislative rule by the director. The notice must be posted in each public restroom for the business or establishment, and either in a conspicuous place near the public entrance of the business or establishment, or in another location in clear view of the public and employees where similar notices are customarily posted.

(c) The director shall provide hyperlinks on the division’s website to downloadable notices that are eight and one-half inches by 11 inches in size that provide information regarding the National Human Trafficking Resource Center and display the telephone number for the
National Human Trafficking Resource Center hotline. These downloadable notices must be available in English, Spanish, and any other language determined by legislative rule by the director. These downloadable notices, if printed and posted, will satisfy the notice posting requirements of this section.

(d) Any law-enforcement officer, representative of the Bureau for Public Health or of a county health department, representative of the State Alcohol Beverage Control Commissioner, representative of the Division of Labor, or other state representative inspecting a business or establishment, or otherwise lawfully acting under his or her state authority, may notify, in writing, any business or establishment that it has failed to comply with the requirements of this section. The written notice must be delivered to the noncomplying business or establishment by certified mail, with return receipt requested. A business or establishment that does not correct a violation within 30 days from the receipt of the written notice is guilty of a misdemeanor and, upon a first conviction thereof, shall be fined not more than $250; and upon a second or subsequent conviction, shall be fined not less than $250 nor more than $500.

(e) For the purposes of this section, and unless a different meaning is plainly required:

(1) “Day hauler” means any person who is employed by a farm labor contractor to transport, or who, for a fee, transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person: Provided, That such term does not include a person engaged in the production of agricultural products;

(2) “Farm labor contractor” means any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits,
solicits, supplies, or hires workers on behalf of an employer
engaged in the growing or producing of farm products, and
who, for a fee, provides in connection therewith one or more
of the following services: Furnishes board, lodging, or
transportation for those workers; supervises, times, checks,
counts, weighs, or otherwise directs or measures their work;
or disburses wage payments to such persons: Provided, That
such term does not include a person engaged in the
production of agricultural products;

(3) “Hospital” shall have the same meaning as set forth
in §16-2D-2(21) of this code;

(4) “Hotel” means any establishment which offers
overnight accommodations to the public in exchange for a
monetary payment;

(5) “Primary airport” shall have the same meaning as set
forth in 49 U.S.C. § 47102(16); and

(6) “Production of agricultural products” means raising,
growing, harvesting, or storing of crops; feeding, breeding,
or managing livestock, equine, or poultry; and producing or
storing feed for use in the production of livestock.

CHAPTER 227

(S. B. 358 - By Senators Weld, Clements, Cline and
Swope)

[Passed February 21, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2019.]

AN ACT to amend and reenact §15-2D-3 of the Code of West
Virginia, 1931, as amended, relating to exempting from the
Purchasing Division purchases made by the Director of the
Division of Protective Services for equipment to maintain security at state facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers.

(a) The director is responsible for the control and supervision of the division. The director and any officer of the division specified by the director may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha County as members of the West Virginia State Police as set forth in §15-2-12(b) and §15-2-12(d) of this code. The director and designated officers shall also have such powers throughout the State of West Virginia in investigating and performing law-enforcement duties for offenses committed on the Capitol Complex or related to the division’s security and protection duties at the Capitol Complex and throughout the state relating to offenses and activities occurring on any property owned, leased, or operated by the State of West Virginia when undertaken at the request of the agency occupying the property: Provided, That nothing in this article shall be construed as to obligate the director or the division to provide, or be responsible for providing, security at state facilities outside the Capitol Complex.

(b) Any officer of the division shall be certified as a law-enforcement officer by the Governor’s Committee on Crime, Delinquency, and Correction or may be conditionally employed as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this code.

(c) The director may:

(1) Employ necessary personnel, all of whom shall be classified exempt, assign them the duties necessary for the efficient management and operation of the division, and
specify members who may carry, without license, weapons
designated by the director;

(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain
security at the Capitol Complex and other state facilities as
may be determined by the Secretary of the Department of
Military Affairs and Public Safety. The provisions of §5A-3-
of this code do not apply to purchases made pursuant to
this subdivision;

(4) Establish and provide standard uniforms, arms,
weapons, and other enforcement equipment authorized for
use by members of the division and shall provide for the
periodic inspection of the uniforms and equipment. All
uniforms, arms, weapons, and other property furnished to
members of the division by the State of West Virginia is and
remains the property of the state;

(5) Appoint security officers to provide security on
premises owned or leased by the State of West Virginia;

(6) Upon request by the Superintendent of the West
Virginia State Police, provide security for the Speaker of the
House of Delegates, the President of the Senate, the
Governor, or a justice of the Supreme Court of Appeals;

(7) Gather information from a broad base of employees
at and visitors to the Capitol Complex to determine their
security needs and develop a comprehensive plan to
maintain and improve security at the Capitol Complex
based upon those needs; and

(8) Assess safety and security needs and make
recommendations for safety and security at any proposed or
existing state facility as determined by the Secretary of the
Department of Military Affairs and Public Safety, upon
request of the secretary of the department to which the
facility is or will be assigned: Provided, That records of
such assessments, and any other records determined by the
Secretary of the Department of Military Affairs and Public Safety to compromise the safety and security at any proposed or existing state facility, are not public records and are not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 et seq. of this code.

(d) The director shall:

(1) On or before July 1, 1999, propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code. The rules shall, at a minimum, establish ranks and the duties of officers within the membership of the division.

(2) On or before July 1, 1999, enter into an interagency agreement with the Secretary of the Department of Military Affairs and Public Safety and the Secretary of the Department of Administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel. A copy of the interagency agreement shall be delivered to the Governor, the President of the Senate, and the Speaker of the House of Delegates, and a copy shall be filed in the office of the Secretary of State and shall be a public record.

(3) Deliver a monthly status report to the Speaker of the House of Delegates and the President of the Senate.

(4) Require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical information, to have its employees submit to a fingerprint-based state and federal background inquiry through the state repository, and require a new employee who is employed to provide services on the grounds or in the building of the Capitol Complex to submit to an employment eligibility check through E-verify.

(i) After the contract for such services has been approved, but before any such employees are permitted to
be on the grounds or in the buildings of the Capitol Complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol Complex for purposes of verifying compliance with this section.

(ii) All current service providers shall, within 90 days of the amendment and reenactment of this section by the 80th Legislature, ensure that all of its employees who are providing services on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or critical information submit to a fingerprint-based state and federal background inquiry through the state repository.

(iii) Any contract entered into, amended, or renewed by an agency or entity of state government with a service provider shall contain a provision reserving the right to prohibit specific employees thereof from accessing sensitive or critical information or to be present at the Capitol Complex based upon results addressed from a criminal background check.

(iv) For purposes of this section, the term “service provider” means any person or company that provides employees to a state agency or entity of state government to work on the grounds or in the buildings that make up the Capitol Complex or who have access to sensitive or critical information.

(v) In accordance with the provisions of Public Law 92-544 the criminal background check information will be released to the Director of the Division of Protective Services.

(5) Be required to provide his or her approval prior to the installation of any and all electronic security systems purchased by any state agency which are designed to connect to the division’s command center.
(e) Effective July 1, 2017, the Director of Security and security officers of the Department of Arts, Culture, and History shall be made part of, and be under the supervision and direction of, the Division of Protective Services. Security for all Capitol Complex properties of the Department of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.

CHAPTER 228

(S. B. 519 - By Senators Maroney, Plymale, Stollings, Woelfel, Takubo, Boso and Swope)

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

AN ACT to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to requiring persons employed to dispatch emergency calls in county emergency dispatch centers to complete a training course in emergency cardiovascular care for telephonic cardiopulmonary resuscitation; requiring training to be completed by a certain date; and requiring calls to be transferred to call center in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-5. Enhanced emergency telephone system requirements.

(a) An enhanced emergency telephone system, at a minimum, shall provide that:
(1) All the territory in the county, including every municipal corporation in the county, which is served by telephone company central office equipment that will permit such a system to be established shall be included in the system: Provided, That if a portion of the county or a portion of a municipal corporation within the county is already being served by an enhanced emergency telephone system, that portion of the county or municipality may be excluded from the county enhanced emergency telephone system;

(2) Every emergency service provider that provides emergency service within the territory of a county participate in the system;

(3) Each county answering point be operated constantly;

(4) Each emergency service provider participating in the system maintain a telephone number in addition to the one provided in the system; and

(5) If the county answering point personnel reasonably determine that a call is not an emergency, the personnel provide the caller with the number of the appropriate emergency service provider.

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, a county commission or the West Virginia State Police shall seek the advice of both the telephone companies providing local exchange service within the county and the local emergency providers.

(d) As a condition of employment, a person employed as the director of an emergency dispatch center who dispatches emergency calls or supervises the dispatching of emergency call takers is subject to an investigation of their character and background. This investigation shall include, at a minimum, a criminal background check conducted by
the State Police at its expense. A felony conviction shall preclude a person from holding any of these positions.

(e) As a condition of continued employment, persons employed to dispatch emergency calls in county emergency dispatch centers shall successfully complete:

(1) A 40-hour nationally recognized training course for dispatchers within one year of the date of their employment;

(2) A nationally recognized training course in emergency cardiovascular care for telephonic cardiopulmonary resuscitation selected by the medical director of an emergency medical dispatch center. This training course shall incorporate protocols for out-of-hospital cardiac arrest and compression-only cardiopulmonary resuscitation and continuing education, as appropriate. The training requirements of this subdivision are effective not later than July 1, 2020. Persons employed subsequent to July 1, 2019, shall complete the training within one year of the date of employment; and

(3) An additional nationally recognized emergency medical dispatch course or an emergency medical dispatch course approved by the Office of Emergency Medical Services not later than July 1, 2013, or if employed subsequent to July 1, 2013, within one year of the date of employment.

(f) On or before July 1, 2013, the director of each county emergency dispatch center shall develop policies and procedures to establish a protocol for dispatching emergency medical calls implementing a nationally recognized emergency medical dispatch program or an emergency medical dispatch program approved by the Office of Emergency Medical Services: Provided, That a county emergency dispatch center, which utilizes a one-button transfer system, may continue to use this system if the county emergency dispatch center establishes policies and procedures which require the agency to whom the call
is transferred to remain on the call until a first responder arrives.

(g) Each county or municipality shall appoint for each answering point an enhanced emergency telephone system advisory board consisting of at least six members to monitor the operation of the system. The board shall be appointed by the county or municipality and shall include at least one member from affected:

1. Fire service providers;
2. Law-enforcement providers;
3. Emergency medical providers;
4. Emergency services providers participating in the system; and
5. Counties or municipalities.

The director of the county or municipal enhanced telephone system shall serve as an ex officio member of the advisory board.

(h) The initial advisory board shall serve staggered terms of one, two, and three years. The initial terms of these appointees shall commence on July 1, 1994. All future appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term. All members shall serve without compensation. The board shall adopt such policies, rules, and regulations as are necessary for its own guidance. The board shall meet monthly or quarterly. The board may make recommendations to the county or municipality concerning the operation of the system.

(i) Nothing herein contained may be construed to prohibit or discourage in any way the establishment of multijurisdictional or regional systems, or multijurisdictional or regional agreements for the establishment of enhanced
(j) All public safety answering points that answer calls for emergency medical conditions shall, in the appropriate circumstances, provide telephonic assistance in administering cardiopulmonary resuscitation directly or transfer calls to a call center to provide assistance in administering telephonic cardiopulmonary resuscitation.

CHAPTER 229

(Com. Sub. for S. B. 600 - By Senators Trump and Boso)

[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 §15A-1-8, relating generally to preservation of biological evidence obtained through criminal investigations and criminal trials; directing the Secretary of Military Affairs and Public Safety to investigate methods of storage and preservation of biological materials obtained by law enforcement in criminal investigations and criminal prosecutions; directing the Secretary of Military Affairs and Public Safety to submit to the Senate President and Speaker of the House of Delegates a proposed plan, along with proposed legislation, creating a program for the centralized storage and preservation of biological evidence obtained in criminal investigations and criminal trials throughout the state; requiring that such plan and proposed legislation be submitted on or before January 1, 2020; and defining terms.
Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEFINITIONS: GENERAL PROVISIONS.

§15A-1-8. Preservation of biological evidence from criminal cases; directing Secretary to undertake a study and report to the Legislature.

(a) As used in this section:

1. “Biological evidence” means:

2. (A) A sexual assault forensic examination kit; or

3. (B) Semen, blood, saliva, hair, human body tissue, or other biological material containing human DNA.

4. “DNA” means deoxyribonucleic acid.

5. “Secretary” means the Secretary of Military Affairs and Public Safety.

6. (b) The Secretary of Military Affairs and Public Safety shall undertake an investigation of effective modes and methods of storing and preserving biological materials obtained by law enforcement in criminal investigations and criminal prosecutions.

7. (c) On or before January 1, 2020, the Secretary shall submit to the President of the Senate and the Speaker of the House of Delegates a proposed plan, along with proposed legislation, creating within the department a program for the centralized storage and preservation of biological evidence obtained in criminal investigations and criminal trials throughout the state.

8. (d) It is the intent of the Legislature in enacting this section to acknowledge the importance of biological evidence and to recognize that improvements in technology make biological evidence ever more important in identifying criminal perpetrators and protecting innocent persons.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-3C-1, §15-3C-2, §15-3C-3, §15-3C-4, §15-3C-5, §15-3C-6, and §15-3C-7 of said code, all relating to the establishment of an alert system for law-enforcement officers missing in the line of duty or person suspected of killing or inflicting life threatening injuries upon a law-enforcement officer who remain at large; providing legislative findings and declarations relative to the Blue Alert plan; establishment of a Blue Alert program; definitions; activation of a Blue Alert; notice to participating media; broadcasting of a Blue Alert; notification to the Department of Transportation, the Division of Highways and the West Virginia Turnpike Commission of the Blue Alert; termination of the Blue Alert; immunity from criminal or civil liability; and authorization to promulgate guidelines and procedural rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. BLUE ALERT PLAN.

§15-3C-1. Short title.

This article shall be known and may be cited as the “Blue Alert Plan”.

§15-3C-2. Findings and declarations relative to the “Blue Alert Plan”.

CHAPTER 230

(Com. Sub. for H. B. 2446 - By Delegates Hollen, Steele and Mandt)

[Passed February 13, 2019; in effect ninety days from passage.]
[Approved by the Governor on February 25, 2019.]
(a) The Legislature finds that:

1. Public alerts can be one of the most effective tools in locating criminal suspects;

2. The disappearance of a law-enforcement officer in the line of duty or a person who kills or inflicts a life-threatening injury upon a law-enforcement officer poses a serious threat to the safety of the public, and the rapid dissemination of information, including a description of the missing law-enforcement officer, suspect, or suspects, details of the crime, and of any vehicles involved, to the citizens of the affected community and region is, therefore, critical;

3. Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely notifying the law-enforcement community of the location of the missing law-enforcement officer, suspect, or suspects;

4. The most effective method of immediately notifying the public of the location of a missing law-enforcement officer or a person who kills or inflicts a life-threatening injury upon a law-enforcement officer is through the broadcast media; and

5. All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well-being and safety of our law-enforcement officers and the public. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in locating a missing law-enforcement officer or the apprehension of a suspect or suspects who kill or inflict a life-threatening injury upon a law-enforcement officer.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate a missing law-enforcement
officer or locate and safely apprehend a suspect or suspects who kill or inflict a life-threatening injury upon a law-enforcement officer, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish this program for West Virginia.

§15-3C-3. Establishment of “Blue Alert” program.

(a) The Superintendent of the West Virginia State Police shall establish a Blue Alert program authorizing the broadcast media, upon notice from the West Virginia State Police, to broadcast an alert to inform the public of a law-enforcement officer who is missing in the line of duty or a suspect or suspects who kill or inflict a life-threatening injury upon a law-enforcement officer, subject to the criteria established in §15-3C-4 of this code. The program shall be a voluntary, cooperative effort between state law enforcement and the broadcast media.

(b) As used in this article:

(1) “Blue Alert” means an alert issued by the West Virginia State Police pursuant to the provisions of this article.

(2) “Law-enforcement officer” means:

(i) Those persons defined as a chief executive pursuant to §30-29-1(2) of this code;

(ii) Those persons defined as a law-enforcement officer pursuant to §30-29-1(6) of this code;

(iii) Those persons defined as a law-enforcement official pursuant to §30-29-1(7) of this code;

(iv) A federal official who is authorized to carry a firearm and make arrests for violations of federal law; and
(v) A state officer or state correctional employee who is authorized to carry a firearm and make arrests for violations of state law.

(3) “Secretary” means the Secretary of the Department of Military Affairs and Public Safety.

(4) “Suspect” or “Suspects” means an individual or individuals who have killed or inflicted a life-threatening injury upon a law-enforcement officer and who remain at large.

(c) The Superintendent shall notify the broadcast media serving the State of West Virginia of the establishment of Blue Alert program and invite their voluntary participation.

(d) The Superintendent shall submit a plan to the Joint Committee on Government and Finance no later than December 1, 2019. The plan shall include Blue Alert activation protocols, coordination and utilization of established programs to facilitate the apprehension of a person or persons who kill or inflict life-threatening injuries upon law-enforcement officers, and analysis of any costs. The Superintendent shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the “Blue Alert” program.

(e) A Blue Alert shall include:

(i) All appropriate information that the reporting law-enforcement agency has that may assist in the location of a missing law-enforcement officer or apprehension of a suspect or suspects;

(ii) A statement instructing anyone with information related to the killing or injuring of the law-enforcement officer to contact his or her local law-enforcement agency;

(iii) A warning that the suspect or suspects are dangerous and that members of the public should not attempt to apprehend the suspect or suspects themselves.
§15-3C-4. Activation of Blue Alert.

The following criteria shall be met before the West Virginia State Police activate the Blue Alert:

(1) A law-enforcement officer has been killed or seriously injured, or is believed to be missing, in the line of duty;

(2) There is sufficient information available relating to the officer’s last known location or the physical description of any suspect, suspects, or vehicles involved that could be broadcast to assist in locating the officer, suspect, or suspects.

§15-3C-5. Notice to participating media; broadcast of alert.

(a) To participate, the media may agree, upon notice from the West Virginia State Police via email or facsimile, to transmit information to the public about a missing law-enforcement officer or a suspect or suspects that has occurred within their broadcast service region.

(b) The alerts shall include a description of the missing law-enforcement officer, suspect, or suspects, such details of the circumstance surrounding the law-enforcement officer becoming missing or the death or injury to the law-enforcement officer, as may be known, and such other information as the West Virginia State Police may deem pertinent and appropriate. The West Virginia State Police shall, in a timely manner, update the broadcast media with new information when appropriate concerning the missing law-enforcement officer, suspect, or suspects.

(c) The alerts also shall provide information concerning how those members of the public who have information relating to the missing law-enforcement officer, suspect, or suspects may contact the West Virginia State Police or other appropriate law-enforcement agency.
(d) Concurrent with the notice provided to the broadcast media, the West Virginia State Police shall also notify the Department of Transportation, the Division of Highways and the West Virginia Turnpike Commission of the Blue Alert so that the department and the affected authorities may, if possible, through the use of their variable message signs, inform the motoring public that a Blue Alert is in progress and may provide information relating to the missing law-enforcement officer, suspect, or suspects and how motorists may report any information they have to the State Police or other appropriate law-enforcement agency.

(e) The alerts shall terminate upon notice from the West Virginia State Police.

(f) The Superintendent shall develop and undertake a campaign to inform law-enforcement agencies about the Blue Alert program established under this article.

§15-3C-6. Immunity from civil or criminal liability.

No person or entity who, in good faith, follows and abides by the provisions of this article is liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false.

§15-3C-7. Guidelines; procedural rules.

The Superintendent may adopt guidelines and procedural rules to effectuate the purposes of this article.
CHAPTER 231

(Com. Sub. for H. B. 2821 - By Delegates Householder and Criss)
[By Request of the Adjutant General]

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

AN ACT to amend and reenact §15-1B-17 of the Code of West Virginia, 1931, as amended, relating to command and clerical pay for certain national guard members; providing for commander pay clerical work for command, clerical and other pay.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.

(a) There may be paid to each commander of a brigade, regiment, air wing, army group or other corresponding type organization $100 per month and to each commander of a battalion, army squadron, air group or other equivalent type organization $50 per month and to each commander of a company, air squadron or other equivalent type organization $25 per month, payable quarterly, to be known as command pay.

(b) There is allowed to each commander of a brigade, regiment, air wing, army group or equivalent type organization the sum of $100 per month and each commander of a battalion, army squadron, air group or corresponding type organization the sum of $50 per month for clerical services; and to each commander of a company air squadron or corresponding type unit the sum of $25 per month for like services, payable quarterly.

The Commandant of the West Virginia Military Academy is allowed the sum of $25 a month, payable quarterly, for like services.
(c) At the discretion of the Adjutant General, there may be paid to the enlisted man or woman who is directly responsible for the care and custody of the federal and state property of each organization or unit the sum of $10 per month, payable quarterly, upon the certificate of his or her commanding officer that he or she has faithfully and satisfactorily performed the duties assigned him or her and accounted for all property entrusted to his or her care.

(d) The Adjutant General shall determine the amount of entitlement to command pay and clerical pay, using organizational charts showing chain of command and authorized strengths and defining other equivalent type organizations. Notwithstanding the provisions of subsections (a) and (b) of this section, the Adjutant General may authorize the payment of command and clerical pay above the amounts set in subsections (a) and (b) out of existing funding: Provided, That the authorized payment is no more than twice the amounts authorized in subsections (a) and (b) of this section.

(e) Notwithstanding any other provision of this code, there shall be paid to the command administrative officer of the headquarters of the West Virginia Army National Guard and to the executive staff support officer of the headquarters of the West Virginia Air National Guard, or to the officer occupying a similar position, regardless of title, $100 per month, payable quarterly, to be known as an administrative allowance.

(f) The state command sergeant of the West Virginia Army National Guard and the command chief master sergeant of the West Virginia Air National Guard shall receive a monthly administrative allowance of $100 per month. The command sergeant major or command chief master sergeant of a unit authorized under the command of a commander in the rank of colonel shall receive a monthly administrative allowance of $75 per month. The command sergeant major or command chief master sergeant of a unit authorized under the command of a commander in the rank of lieutenant colonel shall receive a monthly administrative allowance of $45 per month.
AN ACT to amend and reenact §29-3-12 of the Code of West Virginia, 1931, as amended, relating to authorizing any member of the West Virginia State Police, Natural Resources Police Officer, or any county or municipal law-enforcement officer to assist the State Fire Marshal or any of his or her employees in any duties for which the State Fire Marshal has jurisdiction; granting the State Fire Marshal, any full-time deputy and assistant fire marshal the power of arrest for obstructing them in their official duties; authorizing the State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal to carry a firearm in the course of official duties; and establishing requirements for annual requalification.

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

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

§29-3-12. Powers and duties of State Fire Marshal.

1 (a) *Enforcement of laws.* — The State Fire Marshal and any other person authorized to enforce the provisions of this article under the supervision and direction of the State Fire Marshal may enforce all laws of the state having to do with:

5 (1) Prevention of fire;
(2) The storage, sale, and use of any explosive, combustible, or other dangerous article or articles in solid, flammable liquid, or gas form;

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect, and control fires;

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live, or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed, or used in direct violation of the State Fire Code.

(b) Assistance upon request. — Upon request, the State Fire Marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, state police officer, Natural Resources police officer, or any county or municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal, or assistant state fire marshal employed pursuant to §29-3-11 of this code and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer’s official duties: Provided, That the State Fire Marshal, or other person authorized to act under this subsection, shall at all times work under the direct supervision of the requesting officer.

(c) Enforcement of rules. — The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article.

(d) Inspections generally. — The State Fire Marshal shall inspect all structures and facilities, other than one- and
two-family dwelling houses, subject to the State Fire Code and this article, including, but not limited to, state, county, and municipally owned institutions, all public and private schools, health care facilities, theaters, churches, and other places of public assembly to determine whether the structures or facilities are in compliance with the State Fire Code.

(e) **Right of entry.** — The State Fire Marshal may, at all reasonable hours, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The State Fire Marshal and any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal may enter upon any property, or enter any building, structure or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the State Fire Marshal pursuant to §29-3-12b(A)(1) or §29-3B-1 et seq. of this code.

(f) **Investigations.** — The State Fire Marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The State Fire Marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of the investigation, the State Fire Marshal shall obtain a proper search warrant: *Provided,* That a search warrant is not necessary where there is permissive waiver or the State Fire Marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.
(g) Testimony. — The State Fire Marshal, in making an inspection or investigation when in his or her judgment the proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or testimony reduced to writing; and shall transmit a copy of the statements or testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person may be compelled to testify or give any statement under this subsection.

(h) Arrests; warrants. — The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to §29-3-11 of this code is hereby authorized and empowered and any person deputized pursuant to §29-3-11 of this code may be authorized and empowered by the State Fire Marshal:

(1) To arrest any person anywhere within the confines of the State of West Virginia, or have him or her arrested, for any violation of the arson-related offenses of §61-3-1 et seq. of this code or of the explosives-related offenses of §61-3E-1 et seq. of said code: Provided, That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court; Provided, however, That the State Fire Marshal, any full-time deputy fire marshal or any full-time assistant fire marshal is authorized to arrest persons for violations of §61-5-17 of this code.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve, and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article, of the arson-related offenses of §61-3-1 et seq. of this code or of the explosives-related offenses of §61-3E-1 et seq. of this code. Proper return shall be made
on all arrest warrants before the tribunal having jurisdiction over the violation.

(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve, and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article, of the arson-related offenses of §61-3-1 et seq. of this code or of the explosives-related offenses of §61-3E-1 et seq. of said code. Proper return shall be made on all search warrants before the tribunal having jurisdiction over the violation.

(4) Any member of the West Virginia State Police, Natural Resources Police Officer, or any county or municipal law-enforcement officer may assist, upon request, the State Fire Marshal or any of his or her employees authorized to enforce the provisions of this section in any duties for which the State Fire Marshal has jurisdiction.

(i) Witnesses and oaths. — The State Fire Marshal may issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him or her to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the State Fire Marshal and cause to be produced before him or her such papers as he or she may require in making the examination. The State Fire Marshal may administer oaths and affirmations to persons appearing as witnesses before him or her. False swearing in any matter or proceeding is considered perjury and is punishable as perjury.

(j) Deputizing members of fire departments in this state. — The State Fire Marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his or her department and who is properly qualified to act as his or her assistant for the purpose of making inspections with the consent of the property owner or the person in control of the property and
the investigations as may be directed by the State Fire
Marshal, and the carrying out of orders as may be prescribed
by him or her, to enforce and make effective the provisions
of this article and any and all rules promulgated by the State
Fire Commission under authority of this article: Provided,
That in the case of a volunteer fire department, only the
chief thereof or his or her single designated assistant may be
so deputized.

(k) Written report of examinations. — The State Fire
Marshal shall, at the request of the county commission of
any county or the municipal authorities of any incorporated
municipality in this state, make to them a written report of
the examination made by him or her regarding any fire
happening within their respective jurisdictions.

(l) Report of losses by insurance companies. — Each
fire insurance company or association doing business in this
state, within 10 days after the adjustment of any loss
sustained by it that exceeds $1,500, shall report to the State
Fire Marshal information regarding the amount of
insurance, the value of the property insured, and the amount
of claim as adjusted. This report is in addition to any
information required by the State Insurance Commissioner.
Upon the request of the owner or insurer of any property
destroyed or injured by fire or explosion, or in which an
attempt to cause a fire or explosion may have occurred, the
State Fire Marshal shall report in writing to the owner or
insurer the result of the examination regarding the property.

(m) Issuance of permits and licenses. — The State Fire
Marshal may issue permits, documents, and licenses in
accordance with the provisions of this article or §29-3B-1 et
seq. of this code: Provided, That unless otherwise provided,
the State Fire Marshall shall take final action upon any
completed permit applications within 30 days of receipt if
the application is uncontested, or within 90 days if the
application is contested. The State Fire Marshal may require
any person who applies for a permit to use explosives, other
than an applicant for a license to be a pyrotechnic operator
under §29-3E-6 of this code, to be fingerprinted and to authorize the State Fire Marshal to conduct a criminal records check through the criminal identification bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

(n) Issuance of citations for fire and life safety violations. — The State Fire Marshal, any deputy fire marshal, and any assistant fire marshal employed pursuant to §29-3-11 of this code, and any person deputized pursuant to subsection (j) of this section may be authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of the State Fire Code and as provided for by the rules promulgated by the State Fire Commission in accordance with §29-3-1 et seq. of this code: Provided, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the State Fire Marshal in the form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation, and the person to whom the citation was issued. The State Fire Marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the State Fire Marshal, the exercise of authority by the person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

(1) Overcrowding places of public assembly;

(2) Locked or blocked exits in public areas;

(3) Failure to abate a fire hazard;
(4) Blocking of fire lanes or fire department connections; and

(5) Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment, and fire alarm systems.

(o) Required training; liability coverage. — No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the Law-enforcement Training Subcommittee of the Governor’s Committee on Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of the person has been provided, in the case of a paid municipal fire department, by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the State Fire Marshal.

(p) Statewide contracts. — The State Fire Marshal may cooperate with the Department of Administration, Purchasing Division, to establish one or more statewide contracts for equipment and supplies utilized by fire companies and departments in accordance with §5A-3-1 et seq. of this code.

(1) Any statewide contract established hereunder shall be made available to any fire company and department in this state, as well as any other state agency or political subdivision that has a need for the equipment or supplies included in those contracts.
(2) The State Fire Marshal may develop uniform standards for equipment and supplies used by fire companies and departments in accordance with §5A-3-1 et seq. of this code.

(3) The State Fire Commission shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this subsection.

(q) Penalties for violations. — Any person who violates any fire and life safety rule of the State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in jail not more than 90 days, or both fined and confined. Every day during which any violation of the provisions of this article continues after knowledge or official notice that it is illegal is a separate offense.

(r) The State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to §29-3-11 of this code may carry a firearm while acting in the course of his or her official duties, if he or she has successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The person shall thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The State Fire Marshal may reimburse the person for the cost of the training and requalification.
AN ACT to amend and reenact §39-1-11 of the Code of West Virginia, 1931, as amended, relating to writings to be recorded under the direction of the county clerk; permitting the clerk, with authorization from the county commission, to scan and make available online when financially feasible certain documents in electronic form rather than in well-bound books, not prepare indices in separate books, and replace existing books by scanning them in approved electronic format; requiring that existing books be retained; providing exception to retention of books; requiring that copies of documents in electronic format are stored on an off-site server; and updating terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-11. Recordation of writings and plats and papers annexed; index; interlineations; filing under Uniform Commercial Code.

1 Every writing (except financing, continuation, and termination statements and other statements and writings permitted to be filed under chapter 46 of this code) authorized by law to be recorded, when admitted to record, shall, with all certificates of acknowledgment, and all plats, schedules, and other papers thereto annexed or thereon indorsed, be recorded by, or under the direction of, the clerk of the county commission, in a well-bound book, to be carefully preserved; and there shall be an index to such book
as well as in the name of the grantee as of the grantor:

Provided, That the county commission may, in accordance
with the provisions of §5A-8-15 of this code, authorize the
clerk to scan, record, and make available online when
determined to be financially feasible by the county
commission all such writings and papers in electronic form
rather than in well-bound books, not prepare in separate
books an index of any type, and replace existing well-bound
books by scanning them in an approved electronic format:

Provided, however, That existing well-bound books be
retained either on-site or off-site unless the provisions of
§5A-8-15 of this code are followed: Provided further, That
any documents in an electronic format are stored on a server
off site, such as a cloud-based server, to retain a backup
copy of electronic documents.

After being recorded, such writing may be delivered to
the party entitled to claim under the same. If, except in those
cases where such writing is recorded by photography or
similar process producing exact facsimile copies, there
appear upon such writing, or any paper or certificate
annexed thereto, any interlineation, erasure, or alteration, of
which no memorandum is contained in the writing, paper,
or certificate, the clerk shall append to the record thereof a
memorandum describing as accurately as may be such
interlineation, erasure, or alteration; and such memorandum
shall be copied into every such writing, paper, or certificate.
Every such memorandum shall be prima facie evidence of
what is stated therein: Provided, That the clerk of the county
commission may refuse to accept for recordation any
instrument printed on both sides of the paper or printed in
whole or part in smaller than 10-point type with at least two
points separating each line. Any failure of such instrument
to be so accepted by the clerk of the county commission
shall not affect the validity thereof as to the parties thereto:

Provided, however, That any such instrument shall be
accepted by the clerk for recording at one and one-half times
the legal fee therefor.

Financing, continuation, and termination statements and
other statements and writings permitted to be filed under
chapter 46 of this code shall be filed in a proper file by the
clerk of the county commission or the Secretary of State, as the case may be, as specified in said chapter 46. Such statements and writings filed in the office of the clerk of the county commission and such statements and writings filed in the office of the Secretary of State shall be indexed according to the name of the debtor and shall disclose the assigned file number and the address of the debtor given in the respective statement or writing. The date and hour of filing and the file number shall be noted on the statement or writing involved. A financing, continuation, or termination statement or other statement or writing permitted to be filed under chapter 46 of this code may, after the same ceases to be effective or lapses, as specified in said chapter 46, be removed from the files in the office of the clerk of the county commission or the Secretary of State, as the case may be, and destroyed.

CHAPTER 234

(S. B. 669 - By Senators Azinger, Baldwin, Beach, Boso, Clements, Hardesty, Jeffries, Lindsay, Maynard, Romano, Rucker, Smith, Takubo, Weld, Woelfel and Trump)

[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 §39-4A-1, §39-4A-2, §39-4A-3, §39-4A-4, and §39-4A-5, all relating to the appointment of commissioners to acknowledge signatures by persons residing in or out of the state of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property for recordation in the state of West Virginia; authorizing the Secretary of State to appoint a qualified person as a commissioner; setting forth qualifications for appointment; establishing application requirements and
Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.

§39-4A-1. Commissioners out of state; qualifications; application fee.

(a) The Secretary of State may appoint a qualified person residing within or without this state and within the United States, its territories, or possessions as a commissioner to acknowledge signatures performed in or out of this state by persons residing in or out of the state of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property for recordation in the state of West Virginia.

(b) To be qualified for an appointment pursuant to subsection (a) of this section, a person must be commissioned as a notary public pursuant to §39-4-20 of this code.

(c) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission and shall comply with and provide the information required by subsection (d) of this section and pay the requisite fee.

(d) Applications for appointment as a commissioner must be made in the form and manner as prescribed by the Secretary of State. The application must include the following information:

(1) Full name;
(2) Date of birth;

(3) Legal residential address;

(4) Employer, if any;

(5) Daytime phone number;

(6) Email address;

(7) Applicant’s signature; and

(8) Any other information deemed necessary by the Secretary of State.

e) The Secretary of State may deny, refuse to renew, revoke, suspend, or impose a condition on a commission for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a commissioner, including:

(1) Failure to comply with this article;

(2) A fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission submitted to the Secretary of State;

(3) A conviction of the applicant or commissioner for any felony or for a crime involving fraud, dishonesty, or deceit;

(4) A finding against, or admission of liability by, the applicant or commissioner in any legal proceeding or disciplinary action based on the applicant’s or commissioner’s fraud, dishonesty, or deceit;

(5) Failure by the commissioner to discharge any duty required of a commissioner, whether by this article, rules promulgated by the Secretary of State, or any federal or state law;
(6) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;

(7) Revocation, suspension, or refusal or failure to renew the commissioner’s commission as a notary public pursuant to §39-4-1 et seq. of this code;

(8) Violation by the commissioner of a rule of the Secretary of State regarding a commissioner; and

(9) Denial, refusal to renew, revocation, suspension, or conditioning of a commission in another state.

(f) Before issuance of a commission, an applicant shall provide at the time of application a statement that he or she solemnly swears or affirms, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; and, if appointed and commissioned, he or she will perform faithfully, to the best of his or her ability, all acts in accordance with the law.

(g) A nonrefundable fee of $500 for each commission issued shall be paid to the Secretary of State: Provided, That the Secretary of State shall have the authority to refund some or all of the application fee for denials resulting from good-faith mistakes made by applicants.

(h) All fees and moneys collected by the Secretary of State pursuant to the provisions of this section shall be deposited by the Secretary of State as follows:

(1) One-half shall be deposited in the state General Revenue Fund; and

(2) One-half shall be deposited in the service fees and collections account established by §59-1-2 of this code for the operation of the Office of the Secretary of State.

(a) Upon approval of a successful application, commissioners shall hold office for 10 years, unless removed by the Secretary of State under the grounds set forth in §39-4A-1(e) of this code.

(b) When any oath may lawfully be administered, or affidavit or deposition taken, within the state, territory, or district for which any such commissioner is appointed, to be used in this state, it may be done by the commissioner.

(c) Each commissioner shall have an official seal, which shall be a rubber stamp and shall contain:

(1) The words “Official Seal”;

(2) The words “Commissioner for West Virginia”;

(3) The commissioner’s name exactly as it is written as an official signature;

(4) The city and state of residence of the commissioner; and

(5) The words “My Commission Expires” and the date of expiration of the commission.

(d) A stamped imprint of the seal, together with the official signature, shall be filed in the office of the Secretary of State.

(e) Commissioners may take, within or any place out of the State of West Virginia, the acknowledgements of deeds and other writings to be admitted to the record in the State of West Virginia, but each acknowledgement shall reflect where the acknowledgement was taken, including, but not limited to, the state and county or territory.

(f) Every certificate of the commissioner shall be authenticated by his or her signature and official seal.

Commissioners shall refrain from the following prohibited activities:

(1) Assisting persons in drafting legal records, giving legal advice, or otherwise practicing law;

(2) Acting as an immigration consultant or an expert on immigration matters; or

(3) Representing a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters.

(4) No provision of this section shall be construed to prohibit the practice of law by a duly licensed attorney.


The Secretary of State may propose rules for legislative approval to implement this article, in accordance with the provisions of §29A-3-1 et seq. of this code.


(a) All requirements, duties, prohibitions, penalties, and procedures set forth in §39-4-1 et seq. of this code that are consistent with the foregoing provisions of this article shall apply to commissioners.

(b) The Secretary of State shall include all active commissioners in its database of notaries public set forth in §39-4-22 of this code, which database shall clearly distinguish commissioners from notaries public.
AN ACT to amend and reenact §17-2A-17a of the Code of West Virginia, 1931, as amended; and to amend and reenact §17-2E-2, §17-2E-3, §17-2E-5, and §17-2E-6 of said code, all relating to the use of state-owned rights-of-way; modifying requirements related to accommodation leases; providing for the determination of fair market value and compensation for accommodation leases; amending procedures and requirements of the state’s dig once policy; modifying definitions; providing for the determination of fair market value and compensation to Division of Highways relating to dig once policy; modifying notice requirements for permit applicants; amending procedures for the adjudication of disputes between telecommunications carriers; providing certain exemptions from dig once requirements; and authorizing the Division of Highways to, upon approval of the Governor, transfer or assign the ownership, control, or any rights related to any in-kind compensation received by the division to any other state agency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-17a. Acquisition of property for utility accommodation purposes; “utility” defined.

(a) The Legislature finds that it is in the public interest for utility facilities to be accommodated on the right-of-way of state highways when such use and occupancy of the
highway right-of-way does not adversely affect highway or
traffic safety or otherwise impair the highway or its
aesthetic quality, and does not conflict with the provisions
of federal, state, or local laws, legislative rules, or agency
policies. Utilities provide essential services to the general
public and, as a matter of sound economic public policy and
law, utilities have used state road rights-of-way for
transmitting and distributing their services. The
accommodation of utility facilities on the rights-of-way of
state highways serves an important public purpose by
increasing public access to utility services.

(b) “Utility” means, for purposes of this chapter, any
privately, publicly, or cooperatively owned line, facility, or
system for producing, transmitting, or distributing
communications, data, information, video services, power,
electricity, light, heat, gas, oil, crude products, water, steam,
waste, stormwater not connected with highway drainage, or
any other similar commodity, including any fire or police
signal system or street lighting system, which directly or
indirectly serves the public. The term “utility” also includes
those similar facilities which are owned or leased by a
government agency for its own use, or otherwise dedicated
solely to governmental use, or those facilities which are
owned or leased by a local exchange carrier, as defined by
150 CSR 6.

(c) In addition to all other powers given and assigned to
the commissioner in this chapter, the commissioner may
acquire, either temporarily or permanently, in the name of
the division, and adjacent to public roadways or highways,
all real or personal property, public or private, or any
interests or rights therein, including any easement, riparian
right, or right of access, determined by the commissioner to
be necessary for present or presently foreseeable future
utility accommodation purposes.

(d) Notwithstanding any provision of this article to the
contrary, the commissioner may lease real property held by
the division or any interest or right in the property, including
airspace rights, if any, for the purpose of accommodating
any utility providing telecommunications or broadband
services that has requested a lease if the commissioner finds, 43
in his or her sole discretion, that entering into the lease 44
agreement with such utility is in the public interest. The 45
execution and governance of such accommodation leases 46
are subject to the following:

48 (1) The term of any accommodation lease authorized by 49
this section may not exceed 30 years;

50 (2) Neither competitive bids nor public solicitations are 51
required prior to entering into a utility accommodation 52
lease;

53 (3) Any utility accommodation lease shall require the 54
utility to pay fair market value for the real property interest 55
as determined by the commissioner: Provided, That because 56
the social, environmental, and economic benefits from such 57
use of state highway rights-of-way is of overwhelming 58
value to the citizens of this state and is in the overall public 59
interest, the division shall establish the fair market value for 60
purposes of this article at $0 in monetary compensation: 61
Provided, however, That a utility accommodation lease may 62
include provisions that convey the state in-kind 63
compensation if the lease includes multiple districts of the 64
Division of Highways;

65 (4) For any utility which is not subject to the jurisdiction 66
of the Public Service Commission, an accommodation lease 67
may not contain any exclusivity provisions;

68 (5) The provisions of this subsection do not require any 69
utility to lease any real property, or any interest or right in 70
the property, from the commissioner; and

71 (6) The ownership, control, or any rights related to any 72
in-kind compensation received by the division may, upon 73
written approval of the Governor, be transferred or assigned 74
to any other state agency.

ARTICLE 2E. DIG ONCE POLICY.

In this article, unless the context otherwise requires:

(1) “Broadband conduit” or “conduit” means a conduit, innerduct, or microduct for fiber optic cables that support facilities for broadband service.

(2) “Broadband service” has the same meaning as defined in §31G-1-2 of this code.

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

(4) “Direct bury” means the burying of telecommunications wire or cable directly into the ground by means of plowing or direct insertion without the opening of a trench and without the installation of conduit or innerduct.

(5) “Division” means the Division of Highways.

(6) “Longitudinal access” means access to or the use of any part of a right-of-way that extends generally parallel to the traveled right-of-way.

(7) “Permit” means an encroachment permit issued by the commissioner of the division under the authority of this code, and pursuant to the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or equivalent policy, as may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way and where such work involves the creation or opening of a trench for the installation of telecommunications facilities in a right-of-way.

(8) “Right-of-way” means land, property, or any interest therein acquired or controlled by the division for transportation facilities or other transportation purposes or specifically acquired for utility accommodation.
(9) “Telecommunications carrier” means a telecommunications carrier:

(A) As determined by the Public Service Commission of West Virginia; or

(B) That meets the definition of telecommunications carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §153.

(10) “Telecommunications facility” means any cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, or device that is used to transmit, receive, produce or distribute a signal for telecommunications purposes via wireline, electronic, or optical means.

(11) “Utility” has the meaning ascribed to it in §17-2A-17a of this code.

(12) “Wireless access” means access to, and use of, a right-of-way for the purpose of constructing, installing, maintaining, using, or operating telecommunications facilities for wireless telecommunications.

§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation.

(a) Before obtaining a permit for the construction or installation of a telecommunications facility in a right-of-way, a telecommunications carrier must enter into an agreement with the division consistent with the requirements of this article.

(b) Before granting a permit for longitudinal access or wireless access to a right-of-way, the division shall:
(1) First enter into an agreement with a telecommunications carrier that is competitively neutral and nondiscriminatory as to other telecommunications carriers; and

(2) Upon receipt of any required approval or concurrence by the Federal Highway Administration the division may issue a permit granting access under this section: Provided, That the division shall comply with all applicable federal regulations with respect to approval of an agreement, including, but not limited to, 23 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:

(A) Specify the terms and conditions for renegotiation of the agreement;

(B) Set forth the maintenance requirements for each telecommunications facility;

(C) Be nonexclusive; and

(D) Be for a term of not more than 30 years.

c) Unless specifically provided for in an agreement entered into pursuant to subsection (a) of this section, the division may not grant a property interest in a right-of-way pursuant to this article.

d) A telecommunications carrier shall compensate the division for the use of spare conduit or related facilities owned or controlled by the division as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section. The compensation must be, without limitation:

(1) At fair market value: Provided, That because the social, environmental, and economic benefits from such use of state highway rights-of-way is of overwhelming value to the citizens of this state and is in the overall public interest,
the division shall establish the fair market value for purposes of this article at $0 in monetary compensation;

(2) Competitively neutral;

(3) Nondiscriminatory;

(4) Open to public inspection;

(5) Determined based on the geographic region of this state, taking into account the population and the impact on private right-of-way users in the region; and once determined, set at an amount that encourages the deployment of digital infrastructure within this state; and

(6) Paid with in-kind compensation.

e) The division may consider adjustments for areas the division, in conjunction with the council, determines are underserved or unserved areas of the state and may consider the value to such areas for economic development, enhancing the transportation system, expanding opportunities for digital learning, and telemedicine.

f) For the purpose of determining the amount of in-kind compensation a telecommunications carrier must pay the division for the use of spare conduit or excess conduit or related facilities of the division as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the division may:

(1) Conduct an analysis once every five years, in accordance with the rules, policies, or guidelines of the division, to determine the fair market value of a right-of-way to which access has been granted pursuant to this section; and

(2) Determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities.
(g) The provisions of this article shall not apply to the relocation or modification of existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

§17-2E-5. Telecommunications carrier initiated construction and joint use.

(a) Upon application for a permit, the applying telecommunications carrier shall notify, by email, the council and all other telecommunications carriers on record with the council of the application. Other telecommunications carriers have 15 calendar days to notify the applicant of their interest to share the applicant’s trench. This requirement extends to all underground construction technologies.

(b) If no competing telecommunications carrier provides notice of interest to share the applicant’s trench within 15 calendar days of notice of the project, the carrier applying for the permit shall affirm that fact to the division prior to being issued a permit.

(c) If a competing telecommunications carrier provides notice of interest to share the applicant’s trench, an agreement between the two (or more) telecommunications carriers shall be executed by those entities within 30 days of the notice of interest, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. The financial obligations of each carrier shall be based on the proportionate sharing of costs between each carrier for joint trenching or trench sharing based on the amount of conduit innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division uses a trench, it shall also pay its proportional share unless it is utilizing the trench
as in-kind payment for use of the right-of-way. A copy of the executed agreement shall be provided to the division.

(d) Should a dispute arise between the initial applying telecommunications carrier and a competing telecommunications carrier, including a failure to execute an agreement required by subsection (c) of this section, the dispute shall be adjudicated by the Public Service Commission. All disputes brought to the Public Service Commission under this article shall be adjudicated within 45 days.

(e) If two or more telecommunications carriers are required or authorized to share a single trench, each carrier in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.

(f) The commissioner of the division shall promulgate rules governing the relationship between the telecommunications carriers, as hereinafter provided in this article.

(g) The provisions of this section do not apply to the following projects:

1. Projects where the trench is less than 1,000 feet in length;

2. Projects that use the direct bury of cable or wire facilities;

3. Projects that are solely for the service of entities involved in national security matters or where the disclosure or sharing of a trench location would be against federal policy; or

4. Projects where the telecommunications carrier installs an amount of spare conduit or innerduct equal to what is being installed for its own use and which is made
available for lease to competing telecommunications carriers on a nondiscriminatory basis at rates established by the rules of the Federal Communications Commission. All carriers installing spare conduit or innerduct shall notify the council of the location and capacity of such spare conduit and innerduct upon completion of the project, and the council shall make such information publicly available for competing telecommunications carriers.

§17-2E-6. In-kind compensation.

(a) In-kind compensation paid to the division under an agreement entered into pursuant to this article may include, without limitation:

(1) Conduit or excess conduit;
(2) Innerduct;
(3) Dark fiber;
(4) Access points;
(5) Telecommunications equipment or services;
(6) Bandwidth; and
(7) Other telecommunications facilities as a component of the present value of the trenching.

(b) The division shall value any in-kind compensation based on fair market value at the time of installation or review, and may also consider any valuation or cost information provided by the telecommunications carrier.

(c) In-kind compensation paid to the division may be disposed of if both of the following conditions are met:

(1) The telecommunications facility received as in-kind payment has not been used within 10 years of its installation; and
(2) The commissioner of the division determines that the division does not have an immediately foreseeable need for the telecommunications facility.

(d) Upon determining that it is appropriate to dispose of the telecommunications facility, the division shall determine its current fair market value. The division shall offer the provider or providers who made the in-kind payment the option to purchase any telecommunications facility obtained from such provider. If the provider or providers do not purchase the telecommunications facility, it shall be offered for public auction in the same manner as the division auctions excess rights-of-way.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the division may, upon written approval of the Governor, transfer or assign the ownership, control, or any rights related to any in-kind compensation received by the division to any other state agency.

CHAPTER 236

(Com. Sub. for S. B. 538 - By Senators Clements, Stollings, Plymale and Cline)

[Passed March 9, 2019; in effect from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating generally to the West Virginia Highway Design-Build Pilot Program; modifying and defining monetary project limits of the program and changing terminology; allowing exceptions for declared states of emergency; and allowing use of the program with limits for projects financed with and without bonds.
Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.

§17-2D-2. Highway Design-Build Program.

(a) Notwithstanding any provision of this code to the contrary, the Commissioner of the West Virginia Division of Highways may expedite the construction of projects by combining the design and construction elements of a highway or bridge project into a single contract as provided in this article.

(b)(1) The Division of Highways may contractually obligate no more than $50 million in each year in the program: Provided, That if any of the $50 million is not so contractually obligated in one year, the remaining amount may be applied to the following year’s contractual obligation amount: Provided, however, That the total aggregate amount to be contractually obligated may not exceed $150 million in any one year: Provided further, That for fiscal years beginning after June 30, 2017, the Division of Highways may contractually obligate no more than $200 million on any one project: And provided further, That for fiscal years beginning after June 30, 2017, the Division of Highways may contractually obligate no more than $400 million in each year in the program: And provided further, That for fiscal years beginning after June 30, 2017, if any of the $400 million is not contractually obligated in any year, the remaining amount may be applied to the following year’s contract obligation amount: And provided further, That for fiscal years beginning after June 30, 2017, the total aggregate amount to be contractually obligated may not exceed $500 million in any one year.

(2) Notwithstanding the limits set forth in §17-2D-2(b)(1) of this code, for projects financed without bonds for fiscal years beginning after June 30, 2019, the Division of Highways may contractually obligate in the program:
(A) No more than $200 million on any one project;

(B) No more than $200 million in each year; and

(C) No more than $300 million in the total aggregate amount in any one year.

(3) Notwithstanding and in addition to the limits set forth in §17-2D-2(b)(1) and §17-2D-2(b)(2) of this code, for projects financed with bonds for fiscal years beginning after June 30, 2018, the Division of Highways may contractually obligate in the program:

(A) No more than $300 million on any one project;

(B) No more than $600 million in each year; and

(C) No more than $700 million in the total aggregate amount in any one year.

(c) A design-build project may be let to contract only in accordance with the commissioner’s established policies and procedures concerning design-build projects.

(d) Projects receiving funding above the amount of federal core funding as appropriated to the state by formula in a federal highway authorization, currently titled MAP-21, may utilize the program, but shall not be included in calculating contractual obligation limits provided by §17-2D-2(b) of this code.

(e) The contractual obligations made for projects that are necessitated by a declared state of emergency within a county that the Governor has included in a declaration of emergency shall not be included in calculating contractual obligation limits provided in §17-2D-2(b) of this code.
AN ACT to amend and reenact §18A-3-6 of the Code of West Virginia, 1931, as amended, relating generally to grounds for revocation of a teaching certificate; and providing that a teaching certificate or license shall be automatically revoked if a teacher is convicted of certain crimes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-6. Ground for revocation of certificates; recalling certificates for correction.

(a) The state superintendent may, after 10 days’ notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: Provided, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West
Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: Provided further, That a teacher, as defined by West Virginia Code §18-1-1(g), convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, any criminal offense that requires the teacher to register as a sex offender, or any criminal offense which has as an element delivery or distribution of a controlled substance, shall have his or her certificate or license automatically revoked. Should the conviction resulting in automatic revocation pursuant to this section be overturned by any Court of this State or the United States, the teacher’s certification shall be reinstated unless otherwise prohibited by law.

(b) Any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section shall report this, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent’s judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent may recall the certificate and make such corrections as will conform to the requirements of law and the state board.

CHAPTER 238

(Com. Sub. for H. B. 2662 - By Delegates Westfall, Rohrbach, Zukoff, Toney, R. Thompson, J. Kelly, Evans, Dean, Campbell and Cooper)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §18A-2-5 and §18A-4-8e of the Code of West Virginia, 1931, as amended, all relating to
certificates or employment of school personnel; providing that a service personnel contract of employment is automatically terminated if the employee is convicted of certain crimes; and providing that a bus operator certificate is automatically revoked if the bus driver is convicted of certain crimes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-5. Employment of service personnel; limitation.

The board is authorized to employ such service personnel, including substitutes, as is deemed necessary for meeting the needs of the county school system: Provided, that the board may not employ a number of such personnel whose minimum monthly salary under section eight-a, article four, of this chapter is specified as pay grade “H”, which number exceeds the number employed by the board on March 1, 1988.

Effective July 1, 1988, a county board shall not employ for the first time any person who has not obtained a high school diploma or general educational development certificate (GED) or who is not enrolled in an approved adult education course by the date of employment in preparation for obtaining a GED: Provided, That such employment is contingent upon continued enrollment or successful completion of the GED program.

Before entering upon their duties service personnel shall execute with the board a written contract which shall be in the following form:

“COUNTY BOARD OF EDUCATION

SERVICE PERSONNEL CONTRACT OF
EMPLOYMENT

THIS (Probationary or Continuing) CONTRACT OF
EMPLOYMENT, made and entered into this _________
day of ____________, 19__, by and between THE
BOARD OF EDUCATION OF THE COUNTY OF
__________, a corporation, hereinafter called the
‘Board,’ and (Name and Social Security Number of
Employee), of (Mailing Address), hereinafter called the
‘Employee.’

WITNESSETH, that whereas, at a lawful meeting of the
Board of Education of the County of _____________ held at
the offices of said Board, in the City of
______________, ______________ County,
West Virginia, on the _____ day of
__________, 19__, the Employee was duly
hired and appointed for employment as a (Job
Classification) at (Place of Assignment) for the school year
commencing __________ for the employment term and at
the salary and upon the terms hereinafter set out.

NOW, THEREFORE, pursuant to said employment,
Board and Employee mutually agree as follows:

(1) The Employee is employed by the Board as a (Job
Classification) at (Place of Assignment) for the school year
or remaining part thereof commencing ____________,
19__. The period of employment is _____ days at an
annual salary of $_______ at the rate of $_______ per
month.

(2) The Board hereby certifies that the Employee’s
employment has been duly approved by the Board and will
be a matter of the Board’s minute records.

(3) The services to be performed by the Employee shall
be such services as are prescribed for the job classification
set out above in paragraph (1) and as defined in Section 8,
Article 4, Chapter 18A of the Code of West Virginia, as
amended.

(4) The Employee may be dismissed at any time for
immorality, incompetency, cruelty, insubordination,
intemperance or willful neglect of duty pursuant to the provisions of Section 8, Article 2, Chapter 18A of the Code of West Virginia, as amended.

(5) The Superintendent of the ____________ County Board of Education, subject to the approval of the Board, may transfer and assign the Employee in the manner provided by Section 7, Article 2, Chapter 18A of the Code of West Virginia, as amended.

(6) This contract shall at all times be subject to any and all existing laws, or such laws as may hereafter be lawfully enacted, and such laws shall be a part of this contract.

(7) This contract may be terminated or modified at any time by the mutual consent of the Board and the Employee.

(8) This contract shall be automatically terminated if the Employee is convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, of any criminal offense that requires the Employee to register as a sex offender, or of any criminal offense which has as an element delivery or distribution of a controlled substance: Provided, That should the conviction resulting in automatic revocation pursuant to this section be overturned by any Court of this state or the United States, the Employee’s contract shall be reinstated unless otherwise prohibited by law.

(9) This contract must be signed and returned to the Board at its address of ________________ within thirty days after being received by the Employee.

(10) By signing this contract the Employee accepts employment upon the terms herein set out.

WITNESS the following signatures as of the day, month and year first above written:
The use of this form shall not be interpreted to authorize boards to discontinue any employee’s contract status with the board or rescind any rights, privileges or benefits held under contract or otherwise by any employee prior to the effective date of this section.

Each contract of employment shall be designated as a probationary or continuing contract. The employment of service personnel shall be made a matter of minute record. The employee shall return the contract of employment to the county board of education within thirty days after receipt or otherwise he or she shall forfeit his or her right to employment.

Under such regulation and policy as may be established by the county board, service personnel selected and trained for teacher-aide classifications, such as monitor aide, clerical aide, classroom aide and general aide, shall work under the direction of the principal and teachers to whom assigned.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

(a) The state board shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. The board shall review and, if needed, update the competency tests at least every five years. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral
designations, which are considered a single classification of employment and have a single competency test.

(1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

(2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards a uniform means of determining whether school service personnel who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both. Applicants may take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally.

(1) The performance test for all classifications and categories other than bus operator is administered by an employee of the county board or an employee of a multicounty vocational school that serves the county at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county.

(2) A standard passing score is established by the state Department of Education for each test and is used by county boards.
(3) The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title.

(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and may not be required to take the competency test again.

(d) An applicant who fails to achieve a passing score is given other opportunities to pass the competency test when applying for another vacancy within the classification category.

(e) Competency tests are administered to applicants in a uniform manner under uniform testing conditions. County boards are responsible for scheduling competency tests, notifying applicants of the date and time of the test. County boards may not use a competency test other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, the employee is excused from work to take the competency test without loss of pay. (g) Competency tests are used to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

(h) Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee is considered qualified for the classification title
even though that employee no longer holds that classification.

(i) The requirements of this section do not alter the definitions of class titles as provided in section eight of this article or the procedure and requirements of section eight-b of this article.

(j) Notwithstanding any other provision of this code to the contrary and notwithstanding any rules of the school board concerning school bus operator certification, the certification test for school bus operators shall be required as follows, and school bus operators may not be required to take the certification test more frequently:

(1) For substitute school bus operators and for school bus operators with regular employee status but on a probationary contract, the certification test shall be administered annually;

(2) For school bus operators with regular employee status and continuing contract status, the certification test shall be administered triennially; and

(3) For substitute school bus operators who are retired from a county board and who at the time of retirement had ten years of experience as a regular full-time bus operator, the certification test shall be administered triennially.

(4) School bus operator certificate. —

(A) A school bus operator certificate may be issued to a person who has attained the age of twenty-one, completed the required training set forth in state board rule, and met the physical requirements and other criteria to operate a school bus set forth in state board rule.

(B) The state superintendent may, after ten days’ notice and upon proper evidence, revoke the certificate of any bus operator for any of the following causes:
(i) Intemperance, untruthfulness, cruelty or immorality;

(ii) Conviction of or guilty plea or plea of no contest to a felony charge;

(iii) Conviction of or guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student;

(iv) Just and sufficient cause for revocation as specified by state board rule; and

(v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.

(vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes constitute grounds for revocation only if there is a rational nexus between the conduct of the bus operator and the performance of the job:

(I) Intemperance, untruthfulness, cruelty or immorality;

(II) Just and sufficient cause for revocation as specified by state board rule; and

(III) Using fraudulent, unapproved or insufficient credit to obtain the certificate.

(C) The certificate shall be automatically revoked if the bus operator is convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, of any criminal offense that requires the bus operator to register as a sex offender, or of any criminal offense which has as an element the distribution of a controlled substance: Provided, That should the conviction resulting in automatic revocation pursuant to this section be overturned by any Court of this state or the United States, the bus operator’s certificate shall be reinstated unless otherwise prohibited by law.

(D) The state superintendent shall designate a review panel to conduct hearings on certificate revocations or
denials and make recommendations for action by the state superintendent. The state board, after consultation with employee organizations representing school service personnel, shall promulgate a rule to establish the review panel membership and composition, method of appointment, governing principles and meeting schedule.

(E) It is the duty of any county superintendent who knows of any acts on the part of a bus operator for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent’s judgment may be proper.

(F) If a certificate has been granted through an error, oversight or misinformation, the state superintendent may recall the certificate and make such corrections as will conform to the requirements of law and state board rules.

(5) The state board shall promulgate, in accordance with article three-b, chapter twenty-nine-a of this code, revised rules in compliance with this subsection.

CHAPTER 239

(Com. Sub. for S. B. 291 - By Senators Sypolt, Baldwin, Maynard, Rucker and Roberts)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 22, 2019.]

AN ACT to amend and reenact §5H-1-1, §5H-1-2, and §5H-1-3 of the Code of West Virginia, 1931, as amended, all relating generally to survivor benefits for emergency response providers; changing the name of the West Virginia Fire and EMS Survivor Benefit Act to the West Virginia Emergency
Responders Survivor Benefit Act; making Division of Forestry personnel who die as a proximate result of their participation in wildland fire fighting, emergency response, or disaster response operations eligible for survivor benefits; defining terms; making technical changes; and reorganizing language in the act for clarity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WEST VIRGINIA EMERGENCY RESPONDERS SURVIVOR BENEFIT ACT.

§5H-1-1. Title and legislative intent.

(a) This article is known as the “West Virginia Emergency Responders Survivor Benefit Act.

(b) It is the intent of the Legislature to provide for the payment of survivor benefits to the surviving spouse, designated beneficiary, children, or parents of firefighters, EMS personnel, law-enforcement agency personnel, and Division of Forestry personnel killed in the performance of their emergency response duties.

§5H-1-2. First responder survivor benefit.

(a) Terms. — For the purposes of this article, the following terms have the following meanings:

(1) “Emergency responder” means a paid or volunteer firefighter, EMS personnel, law-enforcement agency personnel, or Division of Forestry personnel.

(2) “Emergency response duties” means:

(A) For a firefighter, EMS provider, or law-enforcement agency personnel, participation in any role of a fire department, EMS agency, or law-enforcement agency function, including, but not limited to: Training functions; administrative meetings; fire department, EMS agency, or law-enforcement incidents or service calls; apparatus,
(B) For a Division of Forestry employee, participation in Division of Forestry wildland fire fighting, emergency, or disaster response operations, including, but not limited to, travel to and from the locations of wildland fires, emergencies, or disasters.

(3) “Law-enforcement agency” means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Public Service Commission nor any state institution of higher education nor any resort area district is a law-enforcement agency.

(4) “Travel” includes riding upon or in any apparatus or vehicle which is owned or used by the fire department, EMS agency, law-enforcement agency, or the Division of Forestry, or any other vehicle going to, or directly returning from, an emergency responder’s home, place of business, or other place where he or she shall have been prior to participating in a fire department function, EMS agency function, law-enforcement agency function, or a Division of Forestry wildland fire-fighting operation, or upon the authorization of the chief of the department, agency head, or other person in charge.

(b) An emergency responder who dies as a proximate result of the performance of his or her emergency response duties is eligible for the survivor benefits established by this act.

(c) Within 30 days after the death of an eligible emergency responder, the department or agency head shall submit certification of the death to the Governor’s Office. Certification of the death shall include the name of the certified fire department, EMS agency, law-enforcement
(d) Upon receipt of the certification of the death from the certified fire department, EMS agency, law-enforcement agency, or Division of Forestry program, the state shall, from moneys from the State Treasury, General Fund, pay to the certified fire department, EMS agency, law-enforcement agency, or Division of Forestry program the sum of $100,000 in the name of the beneficiary or beneficiaries of the emergency responder eligible for the survivor benefit. Within five days of receipt of this sum from the state, the fire department, EMS agency, law-enforcement agency, or Division of Forestry Program shall pay the sum as a benefit to the surviving designated beneficiary or beneficiaries. If there is no surviving designated beneficiary, then the sum shall be paid as if the decedent had designated as beneficiaries those persons who are entitled to inherit the decedent’s intestate estate, in the proportions established by §42-1-3 and §42-1-3a of this code. It is the responsibility of the certified fire department, EMS agency, law-enforcement agency, or Division of Forestry program to document the beneficiary or beneficiaries above mentioned for purposes of reporting to the Governor’s Office.

(e) Any death ruled by a physician to be a result of an injury sustained during performance of emergency response duties makes a deceased emergency responder eligible for this benefit, regardless of when the death occurs.

(f) The death of an eligible emergency responder qualifies his or her beneficiaries for only one state survivor benefit, paid pursuant to the provisions of this section, regardless of the amount.
(g) Every department or agency head employing persons to which this article applies shall provide notice of the benefit provided hereby to such employees and encourage covered employees to provide a written designation of beneficiary to be maintained in the employee’s personnel file.

(h) A person applying to the State Fire Marshal for certification as a firefighter shall provide a written designation of beneficiary using forms and procedures prescribed by the State Fire Marshal.

(i) A person applying to the Commissioner of the Bureau for Public Health for emergency medical services personnel certification shall provide a written designation of beneficiary using forms and procedures prescribed by the commissioner.

§5H-1-3. Effective date.

(a) The effective date for this act is January 1, 2007. The operation of the amendments to this article enacted during the year 2012 shall be effective retroactively to January 1, 2012.

(b) The operation of the amendments to this article enacted during the 2018 First Extraordinary Session of the Legislature shall be effective retroactively to January 1, 2018.
adjustment to gross income for calculating the personal income tax liability of certain retirees receiving pensions from defined benefit pension plans that have been terminated with a consequent reduced benefit; and reinstating the effective period of the allowed adjustment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12d. Additional modification reducing federal adjusted gross income.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, any person who retires under an employer-provided defined benefit pension plan that terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled had the plan not terminated may subtract annually from his or her federal adjusted income a sum equal to the difference in the amount of the maximum annual pension benefit the person would have received for such tax year had the plan not terminated and the maximum annual pension benefit actually received from the guarantor under a benefit guarantee plan: Provided, That if the Tax Commissioner determines that this adjustment reduces the revenues of the state by $2 million or more in any one year, then the Tax Commissioner shall reduce the percentage of the reduction to a level at which the commissioner believes will reduce the cost of the adjustment to $2 million for the next year. This tax adjustment is effective for taxable years beginning on and after January 1, 2008: Provided, however, That for the taxable year 2007, the tax adjustment shall be effective and shall apply retroactively: Provided further, That the adjustment terminates for the tax years on and after January 1, 2015.
(b) This adjustment shall be effective for tax years beginning on January 1, 2020, and shall terminate for taxable years on and after January 1, 2023.

c) This modification is available regardless of the type of return form filed.

CHAPTER 241

(S. B. 268 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 5, 2019; in effect from passage.]
[Approved by the Governor on February 27, 2019.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes.
All amendments made to the laws of the United States after December 31, 2017, but prior to January 1, 2019, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2019, shall be given any effect.

(b) The term “Internal Revenue Code of 1986” means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year 2019 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2019, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; providing rule for determining number of personal exemptions; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2017, but prior to January 1, 2019, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2019, may be given any effect.
(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to those sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) Surtax. — The term “surtax” means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year 2019 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2019, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low-income senior citizen for property tax paid on his or her homestead in this state, the term “laws of the United States” as used in §11-21-9(a) of this code means and includes the term “low income” as defined in §11-21-21(b) of this code and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of U.S.C. § 9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to “each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes”, this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.
CHAPTER 243
(Com. Sub. for S. B. 405 - By Senator Sypolt)

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

AN ACT to amend and reenact §11A-3-23, §11A-3-25, §11A-3-56, §11A-3-57, §11A-3-58, and §11A-3-59 of the Code of West Virginia, 1931, as amended, all relating to increasing the limit to $500 on additional expenses a purchaser may recover in preparing notice list for redemption of purchase and for licensed attorney’s title examination.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-5 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien on the real estate was purchased by an individual may redeem at any time before a tax deed is issued for the real estate. In order to redeem, he or she shall pay to the State Auditor the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest at the rate of one percent per month from the date of sale;

(2) All other taxes which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;
(3) Any additional expenses incurred from January 1 of the year following the sheriff’s sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, with interest at the rate of one percent per month from the date of payment for reasonable legal expenses incurred for the services of an attorney who has performed an examination of the title to the real estate and rendered written documentation used for the preparation of the list: The maximum amount the owner or other authorized person shall pay, excluding the interest, for the expenses incurred for the preparation of the list of those to be served required by §11A-3-19 of this code is $500. An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) Where the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any written documentation used for the preparation of the list of those to be served with notice to redeem, including the certification required in subdivision (3), subsection (a) of this section, incident thereto, in the form of receipts or other evidence of legal expenses, incurred as provided in §11A-3-13 of this code, the person redeeming shall pay the State Auditor the sum of $500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff’s sale for disposition by the sheriff pursuant to the provisions of §11A-3-10, §11A-3-24, §11A-3-25, and §11A-3-32 of this code.

(c) The person redeeming shall be given a receipt for the payment and the written opinion or report used for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article.

(d) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on
real estate purchased by an individual, is compelled in order
to protect himself or herself to redeem the tax lien on all of
the real estate when it belongs, in whole or in part, to some
other person, shall have a lien on the interest of that other
person for the amount paid to redeem the interest. He or she
shall lose his or her right to the lien, however, unless within
30 days after payment he or she files with the clerk of the
county commission his or her claim in writing against the
owner of the interest, together with the receipt provided in
this section. The clerk shall docket the claim on the
judgment lien docket in his or her office and properly index
the claim. The lien may be enforced as other judgment liens
are enforced.

(e) Before a tax deed is issued, the county clerk may
accept, on behalf of the State Auditor, the payment
necessary to redeem any real estate encumbered with a tax
lien and write a receipt. The amount of the payment
necessary to redeem any real estate encumbered with a tax
lien shall be provided by the State Auditor and the State
Auditor shall update the required payments plus interest at
least monthly.

(f) On or before the 10th day of each month, the county
clerk shall deliver to the State Auditor the redemption
money paid and the name and address of the person who
redeemed the property on a form prescribed by the State
Auditor.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set
forth in §11A-3-23 of this code, and the State Auditor has
delivered the redemption money to the sheriff pursuant to
§11A-3-24 of this code, the sheriff shall, upon receipt of the
sum necessary to redeem, promptly notify the purchaser or
his or her heirs or assigns, by mail, of the fact of the
redemption and pay to the purchaser or his or her heirs or
assigns the following amounts:
(1) From the sale of tax lien surplus fund provided by §11A-3-10 of this code:

(A) The surplus of money paid in excess of the amount of the taxes, interest, and charges paid by the purchaser to the sheriff at the sale; and

(B) The amount of taxes, interest and charges paid by the purchaser on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption;

(2) All other taxes on the land which have since been paid by the purchaser or his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment to the date of redemption;

(3) Any additional reasonable expenses that the purchaser may have incurred from January 1 of the year following the sheriff’s sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, in accordance with §11A-3-19 of this code, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding the interest, for the expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-19 of this code shall not exceed the amount actually incurred by the purchaser or $500, whichever is less: Provided, That the attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the State Auditor;
(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list in accordance with §11A-3-19 of this code, the State Auditor shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list from January 1 of the year following the sheriff’s sale to the date of the sale to the date of the redemption.

(c) Where, pursuant to §11A-3-23 of this code, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, including written documentation used for preparation of the list, in the form of receipts or other evidence within 30 days from the date of notification by the State Auditor, the sheriff shall refund the amount to the person redeeming and the purchaser is barred from any claim. Where, pursuant to that section, the State Auditor has received from the person redeeming and therefore delivered to the sheriff the sum of $500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff’s sale to the date of the sale to the date of redemption, and the purchaser provides the sheriff within 30 days from the date of notification satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.
§11A-3-36. Operating fund for land department in Auditor’s office.

(a) The Auditor shall establish a special operating fund for the land department in his or her office. He or she shall pay into such fund all redemption fees, all publication or other charges collected by him or her, if such charges were paid by or were payable to him or her, the unclaimed surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to this article, and all payments made to him or her under the provisions of §11A-3-64 and §11A-3-65 of this code, except such part thereof as represents state taxes and interest. All payments so excepted shall be credited by the Auditor to the general school fund or other proper state fund.

(b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay any balances due to deputy commissioners for services rendered, and any unpaid costs, including those for publication which have accrued or will accrue under the provisions of this article, to pay fees due surveyors under the provisions of §11A-3-43 of this code, and to pay for the operation and maintenance of the land department in his or her office. The surplus over and above the amount of 20 percent of gross revenue from operation of the fund from the prior year, remaining at the end of any fiscal year, shall be paid by the Auditor into the General School Fund.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-45 or §11A-3-48 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the deputy commissioner the following amounts:
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(1) An amount equal to the taxes, interest and charges
due on the date of the sale, with interest thereon at the rate
of one percent per month from the date of sale;

(2) All other taxes thereon, which have since been paid
by the purchaser, his or her heirs or assigns, with interest at
the rate of one percent per month from the date of payment;

(3) Such additional expenses as may have been incurred
in preparing the list of those to be served with notice to
redeem, and for any licensed attorney’s title examination
incident thereto, with interest at the rate of one percent per
month from the date of payment, but the amount he or she
shall be required to pay, excluding said interest, for such
expenses incurred for the preparation of the list of those to
be served with notice to redeem required by §11A-3-52 of
this code, and for any licensed attorney’s title examination
incident thereto, shall not exceed $500. An attorney may
only charge a fee for legal services actually performed and
must certify that he or she conducted an examination to
determine the list of those to be served required by §11A-3-
52 of this code;

(4) All additional statutory costs paid by the purchaser;
and

(5) The deputy commissioner’s fee and commission as
provided by §11A-3-66 of this code. Where the deputy
commissioner has not received from the purchaser
satisfactory proof of the expenses incurred in preparing the
notice to redeem, or of any licensed attorney’s title examination incident thereto, in the form of receipts or other
evidence thereof, the person redeeming shall pay the deputy
commissioner the sum of $500 plus interest thereon at the
rate of one percent per month from the date of the sale for
disposition pursuant to the provisions of §11A-3-57, §11A-
3-58, and §11A-3-64 of this code. Upon payment to the
deputy commissioner of those and any other unpaid
statutory charges required by this article, and of any unpaid
expenses incurred by the sheriff, the Auditor and the deputy
commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the Auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his or her record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however, unless within 30 days after payment he or she shall file with the clerk of the county commission his or her claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the deputy commissioner shall promptly deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs or assigns.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall hold as surplus to be disposed of pursuant to §11A-3-64 of this code an amount thereof equal to the amount of taxes, interest and
9 charges due on the date of the sale, plus the interest at the
10 rate of one percent per month thereon from the date of sale
11 to the date of redemption.

§11A-3-58. Distribution to purchaser.

(a) Where the land has been redeemed in the manner set
forth in §11A-3-56 of this code, and the deputy
commissioner has delivered the redemption money to the
sheriff pursuant to §11A-3-57 of this code, the sheriff shall,
on delivery of the sum necessary to redeem, promptly
notify the purchaser, his or her heirs or assigns, by mail, of
the redemption and pay to the purchaser, his or her heirs or
assigns, the following amounts:

(1) The amount paid to the deputy commissioner at the
sale;

(2) All other taxes thereon, which have since been paid
by the purchaser, his or her heirs or assigns, with interest at
the rate of one percent per month from the date of payment;

(3) Such additional expenses as may have been incurred
in preparing the list of those to be served with notice to
redeem, and for any licensed attorney’s title examination
incident thereto, with interest at the rate of one percent per
month from the date of payment, but the amount which shall
be paid, excluding said interest, for such expenses incurred
for the preparation of the list of those to be served with
notice to redeem required by §11A-3-52 of this code, and
for any licensed attorney’s title examination incident
thereto, shall not exceed $500; and

(4) All additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the
deputy commissioner;
(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem or for any licensed attorney’s title examination incident thereto, the deputy commissioner shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and for any licensed attorney’s title examination incident thereto from the date of the sale to the date of the redemption.

(c) Where, pursuant §11A-3-56 of this code, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, in the form of receipts or other evidence of legal expenses, or for any licensed attorney’s title examination and rendered written documentation used for the preparation of the list incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of $500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within 30 days from the date of notification, the sheriff shall refund such amount to the person redeeming and the purchaser is barred from any claim thereto. Where, pursuant to §11A-3-56 of this code, the deputy commissioner has received from the purchaser and therefore delivered to the sheriff said sum of $500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within 30 days from
the date of notification such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

If the real estate described in the notice is not redeemed within the time specified therein, but in no event prior to 30 days after notices to redeem have been personally served, or an attempt of personal service has been made, or such notices have been mailed or, if necessary, published in accordance with the provisions of §11A-3-55 of this code, following the deputy commissioner’s sale, the deputy commissioner shall, upon the request of the purchaser, make and deliver to the person entitled thereto a quitclaim deed for such real estate in form or effect as follows:

This deed, made this _____ day of ______________, 20____, by and between ____________, deputy commissioner of delinquent and nonentered lands of ______________ County, West Virginia, grantor, and __________________, purchaser (or _________________ heir, devisee, assignee of _____________________, purchaser) grantee, witnesseth, that

Whereas, in pursuance of the statutes in such case made and provided, ________________, deputy commissioner of delinquent and nonentered lands of ______________ County, did, on the _____ day of ______________, 20____, sell the real estate hereinafter mentioned and described for the taxes delinquent thereon for the year(s) 20____, (or as nonentered land for failure of the owner thereof to have the land entered on the land books for the years ____________, or as property escheated to the State of West Virginia, or as waste or unappropriated property) for the sum of $____________________, that being the amount of purchase money paid to the deputy commissioner, and
(here insert name of purchaser) did become the purchaser of such real estate, which was returned delinquent in the name of (or nonentered in the name of, or escheated from the estate of, or which was discovered as waste or unappropriated property); and

Whereas, the deputy commissioner has caused the notice to redeem to be served on all persons required by law to be served therewith; and

Whereas, the real estate so purchased has not been redeemed in the manner provided by law and the time for redemption set forth in such notice has expired.

Now, therefore, the grantor for and in consideration of the premises recited herein, and pursuant to the provisions of Article 3, Chapter 11A of the West Virginia Code, doth grant unto , grantee, his or her heirs and assigns forever, the real estate so purchased, situate in the County of , bounded and described as follows: (here insert description of property)

Witness the following signature:

Deputy Commissioner of Delinquent and Nonentered lands of County

Except when ordered as provided in §11A-3-60 of this code, the deputy commissioner shall execute and deliver a deed within 120 days after the purchaser’s right to the deed accrued.

For the preparation and execution of the deed and for all the recording required by this section, a fee of $50 and the recording expenses shall be charged, to be paid by the grantee upon delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk of the county commission in the deed book in his or her office,
together with the assignment from the purchaser, if one was made, the notice to redeem, the return of service of such notice, the affidavit of publication, if the notice was served by publication, and any return receipts for notices sent by certified mail.

Upon payment of the final costs and fees required by this article, the purchaser shall have the right to inspect and perform necessary and reasonable repairs for the preservation of the real property: Provided, That the current occupant has a duty to preserve the property to the best of his or her ability and control.

CHAPTER 244
(S. B. 499 - By Senators Blair and Cline)

AN ACT to amend and reenact §11-10-3, §11-10-4, §11-10-7, §11-10-14, §11-10-15, and §11-10-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-10-18c; to amend and reenact §11-21-3, §11-21-51a, §11-21-59, and §11-21-71a of said code; to amend said code by adding thereto four new sections, designated §11-21-37a, §11-21-37b, §11-21-37c, and §11-21-59a; to amend said code by adding thereto a new article, designated §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6, §11-21A-7, §11-21A-8, §11-21A-9, §11-21A-10, §11-21A-11, and §11-21A-12; and to amend and reenact §11-24-20 of said code, all relating generally to amending West Virginia tax laws to conform to changes in how partnerships and their partners and other pass-through entities and their equity owners are treated for federal income tax purposes for tax years beginning after December
31, 2017; amending West Virginia Tax Procedures and Administration Act, Personal Income Tax Act, and Corporation Net Income Tax Act to provide for administration, collection, and enforcement of income tax on certain partnerships and other pass-through entities treated as partnerships for federal income tax purposes and their partners and equity owners in conformity with changes made by United States Congress in how these entities and their equity owners are treated for federal income tax purposes for taxable years beginning after December 31, 2017; providing for application of West Virginia Tax Procedure and Administration Act to apply to imputed income taxes imposed on partnerships and other pass-through entities; imposing addition to tax for failure of partnership and other pass-through entity to file partnership’s returns and reports; imposing imputed personal income tax on certain partnerships and other pass-through entities treated like partnerships for federal income tax purposes based on federal audit adjustments; providing general rules and special rules for allocation and apportionment of business income; providing for filing of amended composite personal income tax returns by pass-through entities on behalf of nonresident equity owners; providing additional rules for reporting of federal changes to federal taxable incomes; providing amended rules for reporting of federal adjustments by Internal Revenue Service or other competent authority; providing rules for reporting adjustments by other states’ resident claims credit for tax paid to another state; providing for pass-through entity withholding on nonresidents when partnership or other pass-through entity pushes federal audit adjustments out to equity owners; adding a new article providing for administration, collection, and enforcement of additional West Virginia income taxes from certain partnerships and other pass-through entities treated like partnerships for federal income tax purposes, or their equity owners, that are attributable to federal audit adjustments; defining certain terms; providing for reporting of adjustments to federal taxable income; providing for reporting of federal audit adjustments resulting from federal audit of pass-through entity or from
Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-3. Application of this article.

(a) The provisions of this article apply to inheritance and transfer taxes, estate tax, and interstate compromise and arbitration of inheritance and death taxes: (1) The business registration tax; (2) the minimum severance tax on coal; (3) the corporate license tax; (4) the business and occupation tax; (5) the severance tax, additional severance taxes, telecommunications tax; (6) the interstate fuel tax; (7) the consumers sales and service tax; (8) the use tax; (9) the economic opportunity district excise taxes; (10) the tobacco products excise taxes; (11) the excise tax on e-vapors; (12) the soft drinks tax; (13) the personal income tax; (14) the business franchise tax; (15) the corporation net income tax;
(16) the gasoline and special fuels excise tax; (17) the motor fuels excise tax; (18) the motor carrier road tax; (19) the health care provider taxes; (20) the various solid waste assessment fees administered by the Tax Commissioner pursuant to chapters 17, 17A, 20, 22, and 22C of this code; (21) the excise taxes imposed by this code on sales of alcoholic liquor and wine; (22) the various tax credits administered by the Tax Commissioner; (23) any other tax or fee administered by the Tax Commissioner pursuant to this article; and (24) the tax relief for elderly homeowners and renters administered by the State Tax Commissioner.

This article shall not apply to ad valorem taxes on real and personal property or any other tax not listed in this section, except that in the case of ad valorem taxes on real and personal property, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in §11-10-5f of this code for timely filing and payment to the Tax Commissioner or State Tax Department are the same methods utilized for timely filing and payment with the sheriff.

(b) The provisions of this article apply to beer barrel tax levied by §11-16-1 et seq. of this code; and to wine liter tax levied by §60-8-4 of this code.

(c) The provisions of this article apply to any other article of this chapter or of this code when the application is expressly provided by the Legislature.

(d) The provisions of this article apply to municipal sales and use taxes imposed under §8-13C-1 et seq. of this code and collected by the Tax Commissioner.

§11-10-4. Definitions.

For the purpose of this article, the term:
(a) “C corporation” means a legal entity that is taxed separately from its owners under subchapter C of the Internal Revenue Code as defined in §11-21-1 et seq. and §11-24-1 et seq. of this code.

(b) “Information return or report” means any document required to be filed with the Tax Commissioner by any article of this code, which provides information to the Tax Commissioner but does not include an accurately calculated tax liability of an individual or business entity. Information return or report includes, but is not limited to, information returns filed by S corporations pursuant to §11-24-13b of this code, information returns filed by partnerships pursuant to §11-21-58 of this code, any statement required to be furnished under IRC § 6226(a)(2) or under any other provision of the Internal Revenue Code which provides for the application of rules similar to those in IRC § 6226; and any other information return or report required to be filed with the Tax Commissioner pursuant to §11-21A-1 et seq. of this code, or any other article of this code that is administered under §11-10-1 et seq. of this code.

(c) “Officer or employee of this state” shall include, but is not limited to, any former officer or employee of the State of West Virginia.

(d) “Office of Tax Appeals” means the West Virginia Office of Tax Appeals created by §11-10A-3 of this code.

(e) “Pass-through entity” means an entity that is not subject to tax under §11-24-1 et seq. of this code imposing tax on C corporations or other entities taxable as a C corporation for federal income tax purposes.

(f) “Person” shall include, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, joint venture, limited liability company or other pass-through entity, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and also any officer,
employee, or member of any of the foregoing who, as an
officer, employee, or member, is under a duty to perform or
is responsible for the performance of an act prescribed by
the provisions of this article and the provisions of any of the
other articles of this chapter or this code which impose taxes
administered by the Tax Commissioner, unless the intention
to give a more limited or broader meaning is disclosed by
the context of this article or any of the other articles of this
chapter which impose taxes or fees administered by the Tax
Commissioner under this article.

(g) “Return” means for taxable years beginning on or
after January 1, 2007, a tax or information return or report,
declaration of estimated tax, claim or petition for refund or
credit or petition for reassessment which is complete and
that is required by, or provided for, or permitted under the
provisions of this article (or any article of this chapter
administered under this article) which is filed with the Tax
Commissioner by, on behalf of, or with respect to any
person and any amendment or supplement thereto,
including supporting schedules, attachments, or lists which
are supplemental to the return so filed. For purposes of this
subsection, “complete” means for taxable years beginning
on or after January 1, 2007, the information required to be
entered is entered on the applicable return forms. A return
form is not to be considered complete if the information
required to be entered on the applicable return forms is only
contained in amendments or supplements thereto, including
supporting schedules, attachments, or lists. A return that is
not considered complete is deemed not to be filed:

(1) For purposes of claiming a refund of any tax
administered under this article;

(2) For purposes of the commencement of any limitation
on any assessment under §11-10-15 of this code;

(3) For purposes of determining the commencement of
the period when the Tax Commissioner shall pay interest for
the late payment of a refund;
§11-10-7. Assessment.

(a) General. — If the Tax Commissioner believes that any tax administered under this article has been insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or fee, or has failed to make a return, or has made a return which is incomplete, deficient, or otherwise erroneous, he or she may
proceed to investigate and determine or estimate the tax liability and make an assessment therefor.

(b) **Jeopardy assessments.** — If the Tax Commissioner believes that the collection of any tax administered under this article will be jeopardized by delay, he or she shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall immediately be due and payable. Unless the taxpayer against whom a jeopardy assessment is made posts the required security and petitions for reassessment within 20 days after service of notice of the jeopardy assessment, such assessment shall become final: Provided, That upon written request of the taxpayer made within the 20-day period, showing reasonable cause therefor, the Tax Commissioner may grant an extension of time not to exceed 30 additional days within which such petition may be filed. If a taxpayer against whom a jeopardy assessment has been made petitions for reassessment or requests an extension of time to file a petition for reassessment, the petition or request shall be accompanied by remittance of the amount assessed or such security as the Tax Commissioner may consider necessary to ensure compliance with the applicable provisions of this chapter. If a petition for reassessment is timely filed, and the amount assessed has been remitted, or such other security posted, the provisions for hearing, determination, and appeal set forth in §11-10A-1 *et seq.* of this code shall then be applicable.

(c) **Amendment of assessment.** — The Tax Commissioner may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever he or she ascertains that such assessment is improper or incomplete in any material respect.

(d) **Supplemental assessment.** — The Tax Commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment whenever he or she ascertains that any assessment is imperfect or incomplete in any material respect.
(e) **Address for notice of assessment.** —

1. **General rule.** — In the absence of notice to the Tax Commissioner under §11-10-50 of this code of the existence of a fiduciary relationship, notice of assessment, if sent by certified mail or registered mail to the taxpayer at his or her last known address, shall be sufficient even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation or other legal entity, has terminated its existence.

2. **Joint income tax return.** — In the case of a joint income tax return filed by a husband and wife, such notice of assessment may be a single notice, except that if the Tax Commissioner has been notified by either spouse that separate residences have been established, then in lieu of a single notice, a duplicate original of the joint notice shall be sent by certified or registered mail to each spouse at his or her last known address.

3. **Estate tax.** — In the absence of notice to the Tax Commissioner of the existence of a fiduciary relationship, notice of assessment of a tax imposed by §11-11-1 et seq. of this code, if addressed in the name of the decedent or other person subject to liability and mailed to his or her last known address, by registered or certified mail, shall be sufficient for purposes of this article and §11-11-1 et seq. of this code.

(f) For purposes of this section, the term “taxpayer” includes any partnership or other pass-through entity that owes tax pursuant to §11-21A-1 et seq. of this code.

### §11-10-14. Overpayments; credits; refunds and limitations.

(a) **Refunds or credits of overpayments.** — In the case of overpayment of any tax (or fee), additions to tax, penalties, or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the Tax Commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount
of the overpayment or, if the taxpayer so elects, apply the
same as a credit against the taxpayer’s liability for the tax
for other periods. The refund or credit shall include any
interest due the taxpayer under §11-10-17 of this code.

(b) Refunds or credits of gasoline and special fuel excise
tax or motor carrier road tax. — Any person who seeks a
refund or credit of gasoline and special fuel excise taxes
under §11-14-10, §11-14-11, §11-14-12, §11-14A-9, or
§11-14A-11 of this code, or of motor fuel excise tax under
§11-14C-9 of this code shall file his or her claim for refund
or credit in accordance with the provisions of the applicable
sections. The 90-day time period for determination of
claims for refund or credit provided in subsection (d) of this
section does not apply to these claims for refund or credit:
Provided, That claims for refund or credit of the motor fuel
excise tax under §11-14C-9 of this code are subject to the
90-day time period provided in subsection (d) of this
section: Provided, however, That claims for refund or credit
of the motor fuel excise tax under §11-14C-9 of this code
made by the United States government or unit or agency
thereof, any municipal government or any agency thereof,
or any county board of education made pursuant to §11-
14C-9(c)(1), (2), (3), (4), (5), and (6) of this code will be
subject to a 30-day time period.

(c) Claims for refund or credit. — No refund or credit
shall be made unless the taxpayer has timely filed a claim
for refund or credit with the Tax Commissioner. A person
against whom an assessment or administrative decision has
become final is not entitled to file a claim for refund or
credit with the Tax Commissioner as prescribed herein. The
Tax Commissioner shall determine the taxpayer’s claim and
notify the taxpayer in writing of his or her determination.

(d) Petition for refund or credit; hearing. —

(1) If the taxpayer is not satisfied with the Tax
Commissioner’s determination of taxpayer’s claim for
refund or credit, or if the Tax Commissioner has not
determined the taxpayer’s claim within 90 days after the claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code, after the filing thereof, the taxpayer may file, with the Tax Commissioner, either personally or by certified mail, a petition for refund or credit: Provided, That no petition for refund or credit may be filed more than 60 days after the taxpayer is served with notice of denial of taxpayer’s claim: Provided, however, That after December 31, 2002, the taxpayer shall file the petition with the Office of Tax Appeals in accordance with §11-10A-9 of this code.

(2) The petition for refund or credit shall be in writing, verified under oath by the taxpayer, or by taxpayer’s duly authorized agent having knowledge of the facts, and set forth with particularity the items of the determination objected to, together with the reasons for the objections.

(3) When a petition for refund or credit is properly filed, the procedures for hearing and for decision applicable when a petition for reassessment is timely filed shall be followed.

(e) Appeal. — An appeal from the Office of Tax Appeals’ administrative decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that provided for judicial review of an administrative decision on a petition for reassessment, but no bond is required of the taxpayer. An appeal from the administrative decision of the Office of Tax Appeals on a petition for refund or credit, if taken by the taxpayer, shall be taken as provided in §11-10A-19 of this code.

(f) Decision of the court. — Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.
(g) **Refund made or credit established.** — The Tax Commissioner shall promptly issue his or her requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax (or fee) administered under this article. The Auditor shall issue his or her warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid: *Provided,* That refunds of personal income tax may also be paid out of the fund established pursuant to §11-21-93 of this code.

(h) **Forms for claim for refund or a credit; where return constitutes claim.** — The Tax Commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by §11-21-1 *et seq.,* §11-21A-1 *et seq.,* §11-23-1 *et seq.,* or §11-24-1 *et seq.* of this code, a return signed by the taxpayer which shows on its face that an overpayment of tax has been made constitutes a claim for refund or credit.

(i) **Remedy exclusive.** — The procedure provided by this section constitutes the sole method of obtaining any refund, credit, or any tax (or fee) administered under this article, it being the intent of the Legislature that the procedure set forth in this article is in lieu of any other remedy, including the Uniform Declaratory Judgments Act embodied in §55-13-1 *et seq.* of this code, and §11-1-2a of this code.

(j) **Applicability of this section.** — The provisions of this section apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, to which this article is applicable.

(k) **Erroneous refund or credit.** — If the Tax Commissioner believes that an erroneous refund has been
made or an erroneous credit has been established, he or she may proceed to investigate and make an assessment within the period prescribed in §11-10-15 of this code or institute civil action to recover the amount of the refund or credit, within two years from the date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within two years from the date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

(1) Limitation on claims for refund or credit. —

(1) General rule. — Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax (or fee) was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

(2) Extensions of time for filing claim by agreement. — The Tax Commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

(3) Special rule where agreement to extend time for making an assessment. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if an
agreement is made under §11-10-15 of this code extending the time period in which an assessment of tax can be made, then the period for filing a claim for refund or credit for overpayment of the same tax made during the periods subject to assessment under the extension agreement are also extended for the period of the extension agreement plus 90 days.

(4) **Overpayment of federal tax.** — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer’s federal income or estate tax liability, the period of limitation upon claiming a refund reflecting the final determination in taxes imposed by §11-21-1 *et seq.*, §11-21A-1 *et seq.*, and §11-24-1 *et seq.* of this code may not expire until six months after the determination is made by the United States Internal Revenue Service or other competent authority.

(5) **Tax paid to the wrong state.** — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith erroneously paid personal income tax, estate tax or sales tax, to this state on income or a transaction which was lawfully taxable by another state and, therefore, not taxable by this state, and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time period for filing a claim for refund, or credit, for the tax erroneously paid to this state does not expire until 90 days after the tax is lawfully paid to the other state.

(6) **Exception for gasoline and special fuel excise tax, motor fuel excise tax and motor carrier road tax.** — This subsection does not apply to refunds or credits of gasoline and special fuel excise tax, motor carrier road tax, or motor fuel excise tax sought under §11-14-1 *et seq.*, §11-14A-1 *et seq.*, or §11-14C-1 *et seq.* of this code.
§11-10-15. Limitations on assessment.

(a) General rule. — The amount of any tax, additions to tax, penalties, and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall be assessed within three years after the date the return was filed (whether or not such return was filed on or after the date prescribed for filing): Provided, That in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return was filed, the assessment may be made at any time: Provided, however, That if a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code, on the taxpayer’s state or federal income tax return, an assessment may be made at any time not later than six years after the due date of the return required under §11-21-1 et seq., or §11-24-1 et seq., or §11-21A-1 et seq. of this code for the same taxable year after such return was filed, or not later than three years after an amended return is filed, whichever is later.

(b) Time return deemed filed. —

(1) Early return. — For purposes of this section, a return filed before the last day prescribed by law, or by rules promulgated by the Tax Commissioner for filing thereof, shall be considered as filed on such last date;

(2) Returns executed by Tax Commissioner. — The execution of a return by the Tax Commissioner pursuant to the authority conferred by §11-10-5c of this code shall not start the running of the period of limitations on assessment and collection.

(c) Exceptions. — Notwithstanding subsection (a) of this section:

(1) Extension by agreement. — The Tax Commissioner and the taxpayer may enter into written agreements to extend the period within which the Tax Commissioner may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be
extended for additional periods not in excess of two years
each by subsequent agreements in writing made before the
expiration of the period previously agreed upon;

(2) *Deficiency in federal tax.* — Notwithstanding
subsection (a) of this section, in the event of a final
determination by the United States Internal Revenue
Service or other competent authority of a deficiency in the
taxpayer’s federal income tax liability, the period of
limitation, upon assessment of a deficiency reflecting such
final determinations in the taxes imposed by §11-21-1 *et
seq.*, §11-21A-1 *et seq.*, and §11-24-1 *et seq.* of this code,
may not expire until 90 days after the Tax Commissioner is
advised of the determination by the taxpayer as provided in
§11-21-59 and §11-24-20 of this code, or until the period of
limitations upon assessment provided in subsection (a) of
this section has expired, whichever expires the later, and
regardless of the tax year of the deficiency;

(3) *Special rule for certain amended returns.* — Where,
within the 60-day period ending on the day on which the
time prescribed in this section for the assessment of any tax
for any taxable year would otherwise expire, the Tax
Commissioner receives a written document signed by the
taxpayer showing that the taxpayer owes an additional
amount of such tax for such taxable year, the period for the
assessment of such additional amount shall not expire
before the day 60 days after the day on which the Tax
Commissioner receives such document;

(4) *Net operating loss or capital loss carrybacks.* — In
the case of a deficiency attributable the application by the
taxpayer of a net operating loss carryback or a capital loss
carryback (including that attributable to a mathematical or
clerical error in application of the loss carryback) such
deficiency may be assessed at any time before expiration of
the period within which a deficiency for the taxable year of
the net operating loss or net capital loss which results in
such carryback may be assessed;
(5) **Certain credit carrybacks.** — In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including that attributable to a mathematical or clerical error in application of the credit carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before expiration of the period within which a deficiency for such subsequent taxable year may be assessed. The term “credit carryback” means any carryback allowed under §5E-1-8 of this code;

(6) **Overpayment of tax credited against payment of another tax.** — In the event of a final determination that a taxpayer owes less tax than the amount paid by the taxpayer, and the amount paid was allowed as a credit against a tax administered under this article, the period of limitation upon assessment of a deficiency in the payment of such other tax due to the overstating of the allowable credit, may not expire until 90 days after the Tax Commissioner receives written notice from the taxpayer advising the Tax Commissioner of the final determination reducing the taxpayer’s liability for a tax allowed as a credit against a tax administered under this article, or until the period of limitations upon assessment provided in subsection (a) of this section has expired, whichever expires the later, and regardless of the tax year of the deficiency.

(d) **Cases under bankruptcy code.** — The running of limitations provided in subsection (a) of this section, on the making of assessments, or provided in §11-10-16 of this code, on collection, shall, in a case under Title 11 of the United States Code, be suspended for the period during which the Tax Commissioner is prohibited by reason of
such case from making the assessment or from collecting the tax and:

(1) For assessment, 60 days thereafter; and

(2) For collection, six months thereafter.

§11-10-16. Limitations on collection.

(a) Where assessment is issued. — Every proceeding instituted by the Tax Commissioner for the collection of the amount found to be due under an assessment which has become final of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether the proceeding is instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalty or interest, shall be brought or commenced within 10 years after the date on which such assessment has become final.

(b) Where assessment is not issued. — Every proceeding instituted by the Tax Commissioner for the collection of the amount determined to be due by methods provided by law other than the issuance of an assessment, of any tax, additions to tax, penalties, or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether the proceeding is instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalties or interest, shall be brought or commenced within 10 years after the date on which the taxpayer filed the annual return required to be filed by any of the articles of this code to which §11-10-1 et seq. of this code is applicable and, if no annual return is required, such 10-year period shall begin on the day after the latest periodical return required to be filed in any year is filed.

(c) Extension of time for institutions of collection proceedings by agreement. — The Tax Commissioner and the taxpayer may enter into written agreement to extend the
period within which the Tax Commissioner may institute proceedings for the collection of the amount found to be due under an assessment which has become final, or the amount determined to be due by methods provided by law other than the issuance of the assessment, of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this code to which this article is applicable. This period may not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

An extension of a tax lien, including an extension agreed to in writing by the taxpayer and the Tax Commissioner, beyond 10 years is not effective under the provisions of this section unless the extension is docketed by the Tax Commissioner in the office of the county commission as is required under §38-10C-1 et seq. of this code for docketing tax liens.

§11-10-18c. Failure to file partnership return or report.

(a) General rule. — In addition to the additions to tax imposed by §11-10-18 of this code (relating to failure to file return, supply information, or pay tax), if any partnership required to file a return under §11-21A-3 of this code, or a partnership adjustment report under §11-21A-3 of this code for any taxable year:

(1) Fails to file such return or report at the time prescribed therefor (determined with regard to any extension of time for filing); or

(2) Files a return or report which fails to show the information required under §11-21A-3 of this code, the partnership shall be liable for a penalty determined under §11-10-18c(b) of this code for each month (or fraction thereof) during which such failure continues (but not to
exceed 12 months), unless it is shown that such failure is
due to reasonable cause.

(b) Amount per month. — For purposes of §11-10-18c(a) of this code, the amount determined under §11-10-18c(b) of this code for any month is the product of:

(1) $195, multiplied by

(2) The number of persons who were partners in the
partnership during any part of the taxable year.

c) Assessment of penalty. — The penalty imposed by
§11-10-18c(a) of this code shall be assessed against the
partnership.

d) Deficiency procedures not to apply. — The
deficiency procedures set forth in §11-10A-1 et seq. of this
code may not apply in respect of the assessment or
collection of any penalty imposed by §11-10-18c(a) of this
code.

e) Adjustment for inflation. —

(1) In general. — In the case of any return required to
be filed in a calendar year beginning after 2017, the $195
amount under 11-10-18c(b)(1) of this section shall be
increased by such dollar amount multiplied by the cost-of-
living adjustment determined under IRC §1(f)(3)
determined by substituting “calendar year 2017” for
“calendar year 2016” in subparagraph (A)(ii) thereof.

(2) Rounding. — If any amount adjusted under §11-10-
18c(e)(1) of this code is not a multiple of $5, such amount
shall be rounded to the next lowest multiple of $5.

(f) Effective date. — This section enacted in 2019 shall
apply to taxable years beginning on and after January 1, 2018.
ARTICLE 21. PERSONAL INCOME TAX ACT.

§11-21-3. Imposition of tax; persons subject to tax.

(a) *Imposition of tax.* — A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate, and trust.

(b) *Partners and partnerships.* — A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities. However, partnerships and other pass-through entities are subject to the tax imposed by this article to the extent they elect to pay additional West Virginia income taxes owed that are attributable to final federal partnership audit adjustments under §11-21A-3 of this code.

(c) *Associations taxable as corporations.* — An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) *Exempt trusts and organizations.* — A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) *Cross references.* — For definitions of West Virginia taxable income of:

1. Resident individual, see §11-21-11 of this code.
2. Resident estate or trust, see §11-21-18 of this code.
3. Nonresident individual, see §11-21-30 of this code.
4. Nonresident estate or trust, see §11-21-38 of this code.
(f) **Effective date.** — This section as amended in 2019 shall apply to taxable years beginning on and after January 1, 2018.

**§11-21-37a. Allocation and apportionment of income of nonresidents from multistate business activity.**

(a) Notwithstanding any provision of §11-21-37 of this code to the contrary, a business doing business in West Virginia and in one or more other states shall allocate its nonbusiness income as provided in §11-21-37a(c) of this code and shall apportion its business income as provided in §11-21-37a(f) of this code to determine the West Virginia source income of its nonresident partners and nonresident corporation shareholders for purposes of this article. For purposes of this section:

1. The term “business entity” includes a partnership, limited partnership, joint venture, corporation, and any other group or combination acting as a unit, but does not include a sole proprietorship; and

2. The term “engaging in business” or “doing business” means any activity of a business entity which enjoys the benefits and protection of government and laws in this state.

(b) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not “taxable in another state”. For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

1. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax; or
(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.

(c) Nonbusiness income is allocated. —

Nonbusiness income. — The term “nonbusiness income” means all income other than business income.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in §11-21-37a(d)(1) through (4) of this code: Provided, That to the extent the items constitute business income of the taxpayer, they may not be so allocated but shall be apportioned to this state according to the provisions of §11-21-37a(e) of this code.

(1) Net rents and royalties. —

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state; or

(ii) In their entirety if the taxpayer’s commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents
and royalties by a fraction, the numerator of which is the
number of days of physical location of the property in the
state during the rental or royalty period in the taxable year
and the denominator of which is the number of days of
physical location of the property everywhere during all
rental or royalty periods in the taxable year. If the physical
location of the property during the rental or royalty period
is unknown or unascertainable by the taxpayer, tangible
personal property is utilized in the state in which the
property was located at the time the rental or royalty payer
obtained possession.

(2) Capital gains. —

(A) Capital gains and losses from sales of real property
located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible
personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the
sale; or

(ii) The taxpayer’s commercial domicile is in this state
and the taxpayer is not taxable in the state in which the
property had a situs.

(C) Capital gains and losses from sales of intangible
personal property are allocable to this state if the taxpayer’s
commercial domicile is in this state.

(3) Interest and dividends are allocable to this state if the
taxpayer’s commercial domicile is in this state.

(4) Patent and copyright royalties. —

(A) Patent and copyright royalties are allocable to this
state:

(i) If and to the extent that the patent or copyright is
utilized by the payer in this state; or
(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer’s commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer’s commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer’s commercial domicile is located.

(e) Business income defined. — The term “business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer’s regular trade or business operations and includes all income which is apportionable under the Constitution of the United States.

(f) Business activities partially within and partially without this state; apportionment of business income. — All net income, after deducting those items specifically allocated under §11-21-37a(d) of this code, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the
denominator of which is four, reduced by the number of
factors, if any, having no denominator.

(1) **Property factor.** — The property factor is a fraction,
the numerator of which is the average value of the
taxpayer’s real and tangible personal property owned or
rented and used by it in this state during the taxable year and
the denominator of which is the average value of all the
taxpayer’s real and tangible personal property owned or
rented and used by the taxpayer during the taxable year,
which is reported on Schedule L Federal Form 1065, plus
the average value of all real and tangible personal property
leased and used by the taxpayer during the taxable year.

(2) **Value of property.** — Property owned by the
taxpayer shall be valued at its original cost, adjusted by
subsequent capital additions or improvements thereto and
partial disposition thereof, by reason of sale, exchange,
abandonment, etc.: Provided, That where records of original
cost are unavailable or cannot be obtained without
unreasonable expense, property shall be valued at original
cost as determined under rules of the Tax Commissioner.
Property rented by the taxpayer from others shall be valued
at eight times the annual rental rate. The term “net annual
rental rate” is the annual rental paid, directly or indirectly,
by the taxpayer, or for its benefit, in money or other
consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible
personal property, or any part of the property, whether
designated as a fixed sum of money or as a percentage of
sales, profits, or otherwise.

(B) Any amount payable as additional rent or in lieu of
rents, such as interest, taxes, insurance, repairs, or any other
items which are required to be paid by the terms of the lease
or other arrangement, not including amounts paid as service
charges, such as utilities, janitor services, etc. If a payment
includes rent and other charges unsegregated, the amount of
rent shall be determined by consideration of the relative values of the rent and the other items.

(3) **Movable property.** — The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by other reasonable method acceptable to the Tax Commissioner.

(4) **Leasehold improvements.** — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvement, or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(5) **Average value of property.** — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: Provided, That the Tax Commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(6) **Payroll factor.** — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer during the taxable year,
as shown on the taxpayer’s federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation or as shown on a pro forma return.

(7) **Compensation.** — The term “compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

(8) **Employee.** — The term “employee” means:

(A) Any officer of a business entity; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) **Compensation.** — Compensation is paid or accrued in this state if:

(A) The employee’s service is performed entirely within this state; or

(B) The employee’s service is performed both within and without this state, but the service performed without the state is incidental to the individual’s service within this state. The word “incidental” means any service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and:
(i) The employee’s base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee’s residence is in this state.

The term “base of operations” is the place of a more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers, or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points. The term “place from which the service is directed or controlled” refers to the place from which the power to direct or control is exercised by the employer.

(10) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income) and reflected in its gross income reported and as appearing on the taxpayer’s Federal Form 1065 or 1120, as appropriate, or any successor form, and consisting of those certain pertinent portions of the (gross income) elements set forth: Provided, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.
Allocation of sales of tangible personal property. —

(A) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the free on board point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which the property is ultimately received after all transportation has been completed is the place at which the property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, is delivery to the purchaser in this state and direct delivery outside this state to a person or firm designated by the purchaser is not delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government.

(B) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed, as defined in subsection (b) of this section, shall be excluded from the denominator of the sales factor.

Allocation of other sales. — Sales, other than sales of tangible personal property, are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or
(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in §11-21-7b(b) of this code.

(f) **Income-producing activity.** — The term “income-producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income-producing activity” includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing, or other use of real property;

(3) The sale, rental, leasing, licensing, or other use of tangible personal property; or

(4) **The sale, licensing or other use of intangible personal property.** — The mere holding of intangible personal property is not, in itself, an income-producing activity: *Provided,* That the conduct of the business of a financial organization is an income-producing activity.

(g) **Cost of performance.** — The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) **Other methods of allocation and apportionment.** —
(1) General. — If the allocation and apportionment provisions of §11-21-37a(d) and §11-21-37a(f) of this code do not fairly represent the extent of the taxpayer’s business activities in this state, the taxpayer may petition for, or the Tax Commissioner may require, in respect to all or any part of the taxpayer’s business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer’s income. The petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing the return and the petition shall include a statement of the petitioner’s objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with detail and proof as the Tax Commissioner requires.

(2) Burden of proof. — In any proceeding before the Office of Tax Appeals established in §11-10A-1 et seq. of this code, or in any court in which employment of one of the methods of allocation or apportionment provided in subdivision (1) or (2) of this subsection is sought, on the grounds that the allocation and apportionment provisions of §11-21-37a(d) and §11-21-37a(f) of this code do not fairly represent the extent of the taxpayer’s business activities in this state, the burden of proof is on:

(A) The Tax Commissioner, if the commissioner seeks employment of one of the methods; or

(B) The taxpayer, if the taxpayer seeks employment of one of the other methods.
(i) **Effective date.** — This section added in 2019 shall apply to taxable years beginning on and after January 1, 2018.

§11-21-37b. Special apportionment rules.

(a) **General.** — The Legislature hereby finds that the general formula set forth in §11-21-37a of this code for apportioning the business income of individuals, partnerships, other pass-through entities, and small business corporations taxable in this as well as in another state is inappropriate for use by certain businesses due to the particular characteristics of those businesses or the manner in which such businesses are conducted. Accordingly, the general formula set forth in §11-21-37a of this code may not be used to apportion business income when a specific formula established under this section applies to the business of the taxpayer. The Legislature further finds that the Tax Commissioner has the authority under §11-1-1 et seq. of this code to promulgate by legislative rules special formula or formulae by which a specified classification of taxpayers is required to apportion its business income. Accordingly, this section may not be construed as prohibiting the Tax Commissioner from exercising his authority to promulgate legislative rules which set forth such other special formula or formulae and in that regulation requiring a specified classification of taxpayers to apportion their business income as provided in that special formula, instead of apportioning their business income employing the general formula set forth in §11-21-37a of this code, when the commissioner believes that the formula or formulae will more fairly and more reasonably allocate and apportion to this state the adjusted federal taxable income of the taxpayer. Additionally, nothing in this section may prevent the Tax Commissioner from requiring the use, or the taxpayer from petitioning to use, as the case may be, some other method of allocation or apportionment as provided in §11-21-37a(h) of this code. Permission granted to a taxpayer under §11-21-37a(h) of this code to use another method of allocation or apportionment shall be valid for a
period of five consecutive taxable years, beginning with the taxable year for which such authorization is granted, provided there is no material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment. Upon expiration of any such authorization the taxpayer may again petition under §11-21-37a of this code to use another method of apportionment. A material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment automatically revokes authorization to use that other method beginning with the taxable year in which the material change of fact occurred or the taxable year for which a material change in law first takes effect, whichever occurs first.

(b) Motor carriers. — Motor carriers of property or passengers shall apportion the business income component of their adjusted federal taxable income to this state by the use of the ratio which their total vehicle miles in this state during the taxable year bears to total vehicle miles of the corporation everywhere during the taxable year, except as otherwise provided in this subsection.

(1) Definitions. — For purposes of this subsection:

(A) “Motor carrier” means any person engaging in the transportation of passengers or property or both, for compensation by motor propelled vehicle over roads in this state, whether traveling on a scheduled route or otherwise.

(B) “Vehicle mile” means the operation of a motor carrier over a distance of one mile, whether owned or operated by a corporation.

(2) The provisions of this subsection may not apply to a motor carrier:

(A) Which neither owns nor rents real or tangible personal property located in this state, which has made no pick-ups or deliveries within this state, and which has
traveled less than 50,000 vehicle miles in this state during
the taxable year; or

(B) Which neither owns nor rents any real or tangible
personal property located in this state, except vehicles, and
which makes no more than 12 trips into or through this state
during a taxable year.

(3) The mileage traveled under 50,000 miles or the
mileage traveled in this state during the 12 trips into or
through this state may not represent more than five percent
of the total motor vehicle miles traveled in all states during
the taxable year.

c) Effective date. — The provisions of this section
enacted in 2019 shall apply to all taxable years beginning
on or after January 1, 2018.

§11-21-37c. Special apportionment rules - financial organizations.

(a) General. — The Legislature hereby finds that the
general formula set forth in §11-21-37a of this code for
apportioning the business income of persons taxable in this
state as well as in another state is inappropriate for use by
financial organizations due to the particular characteristics
of those organizations and the manner in which their
business is conducted. Accordingly, the general formula set
forth in §11-21-37a of this code may not be used to
apportion the business income of financial organizations,
which shall use only the apportionment formula and
methods set forth in this section.

(b) West Virginia financial organizations taxable in
another state. — The West Virginia taxable income of a
financial organization that has its commercial domicile in
this state and which is taxable in another state shall be the
sum of: (1) The nonbusiness income component of its
adjusted federal taxable income for the taxable year which
is allocated to this state as provided §11-21-37a(d) of this
code; plus (2) the business income component of its
adjusted federal taxable income for the taxable year which
is apportioned to this state as provided in this section.

(c) Out-of-state financial organizations with business
activities in this state. — The West Virginia taxable income
of a financial organization that does not have its commercial
domicile in this state but which regularly engages in
business in this state shall be the sum of: (1) The
nonbusiness income component of its adjusted federal
taxable income for the taxable year which is allocated to this
state as provided in §11-21-37a(d) of this code; plus (2) the
business income component of its adjusted federal taxable
income for the taxable year which is apportioned to this state
as provided in this section.

(d) Engaging in business - nexus presumptions and
exclusions. — A financial organization that has its
commercial domicile in another state is presumed to be
regularly engaging in business in this state if during any year
it obtains or solicits business with 20 or more persons within
this state, or if the sum of the value of its gross receipts
attributable to sources in this state equals or exceeds
$100,000. However, gross receipts from the following types
of property, as well as those contacts with this state
reasonably and exclusively required to evaluate and
complete the acquisition or disposition of the property, the
servicing of the property or the income from it, the
collection of income from the property or the acquisition or
liquidation of collateral relating to the property shall not be
a factor in determining whether the owner is engaging in
business in this state:

(1) An interest in a real estate mortgage investment
conduit, a real estate investment trust, or a regulated
investment company;

(2) An interest in a loan backed security representing
ownership or participation in a pool of promissory notes or
certificates of interest that provide for payments in relation
(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan, or a secured commercial loan and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; or

(5) Any amounts held in an escrow or trust account with respect to property described above.

(e) Definitions. — For purposes of this section:

(1) “Commercial domicile” has same meaning as that term is defined in §11-24-3a of this code.

(2) “Deposit” means:

(A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or it is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account whether or not advance notice is required to withdraw the credit funds, or which is evidenced by a certificate of deposit, thrift certificate, investment certificate, or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler’s check on which the financial organization is primarily liable: Provided, That without limiting the generality of the term “money or its equivalent”, any account or instrument must be regarded as
evidencing the receipt of the equivalent of money when
credited or issued in exchange for checks or drafts or for a
promissory note upon which the person obtaining any credit
or instrument is primarily or secondarily liable or for a
charge against a deposit account or in settlement of checks,
drafts or other instruments forwarded to the bank for
collection;

(B) Trust funds received or held by the financial
organization, whether held in the trust department or held or
deposited in any other department of the financial
organization;

(C) Money received or held by a financial organization
or the credit given for money or its equivalent received or
held by a financial organization in the usual course of
business for a special or specific purpose, regardless of the
legal relationship thereby established, including, without
being limited to, escrow funds, funds held as security for an
obligation due the financial organization or other, including
funds held as dealers’ reserves or for securities loaned by
the financial organization, funds deposited by a debtor to
meet maturing obligations, funds deposited as advance
payment on subscriptions to United States government
securities, funds held for distribution or purchase of
securities, funds held to meet its acceptances or letters of
credit, and withheld taxes: Provided, That there may not be
included funds which are received by the financial
organization for immediate application to the reduction of
an indebtedness to the receiving financial organization, or
under condition that the receipt thereof immediately reduces
or extinguishes an indebtedness;

(D) Outstanding drafts, including advice or
authorization to charge a financial organization’s balance in
another organization, cashier’s checks, money orders or
other officer’s checks issued in the usual course of business
for any purpose, but not including those issued in payment
for services, dividends, or purchases or other costs or
expenses of the financial organization itself; and
(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if the entity is engaged in soliciting and holding balances in the regular course of its business.

(3) “Financial organization” has the same meaning as that term is defined in §11-21-3a of this code.

(4) “Sales” means, for purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (g) of this section, regardless of their source.

(f) Apportionment rules. — A financial organization which regularly engages in business both within and without this state shall apportion the business income component of its federal taxable income, after adjustment as provided in §11-24-6 of this code, by multiplying the amount thereof by the special gross receipts factor determined as provided in subsection (g) of this section.

(g) Special gross receipts factor. — The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in §11-24-6(f)(1)(A), (B), (C), and (D) of this code.

(1) Numerator. — The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under §11-21-37a of this code, the following:

(A) Receipts from the lease or rental of real or tangible personal property whether as the economic equivalent of an extension of credit or otherwise if the property is located in this state;
(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if the security property is located in the state. If the security property is also located in one or more other states, receipts are presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be proposed by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: Provided, That receipts are presumed to be from sources in this state and the presumption may be overcome by reference to factors described in rules to be proposed by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(E) Interest income and other receipts from a financial organization’s syndication and participation in loans, under the rules set forth in paragraphs (A) through (D), inclusive, of this subdivision;

(F) Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders’ fees if the borrower or debtor is a resident of this state or if the billings for any receipts are regularly sent to an address in this state;
(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. When merchants are located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer’s election, receipts from loan-related fees which are either: (I) “Pooled” or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers’ residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer’s election, receipts from deposit-related fees which are either: (I) “Pooled” or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors’ residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate’s decedent was a resident of this state
immediately before death or the grantor who either funded
or established the trust is a resident of this state; or

(v) The service receipt is associated with the
performance of any other service not identified above and
the service is performed for an individual resident of, or for
a corporation or other business domiciled in, this state and
the economic benefit of service is received in this state;

(I) Gross receipts from the issuance of travelers’ checks
and money orders if the checks and money orders are
purchased in this state; and

(J) All other receipts not attributed by this rule to a state
in which the taxpayer is taxable shall be attributed pursuant
to the laws of the state of the taxpayer’s commercial
domicile.

(2) Denominator. — The denominator of the gross
receipts factor shall include all of the taxpayer’s gross
receipts from transactions of the kind included in the
numerator, but without regard to their source or situs.

(h) Effective date. — The provisions of this section
enacted in 2019 shall apply to all taxable years beginning
on or after January 1, 2018.

§11-21-51a. Composite returns.

(a) Nonresident individuals who are required by this
article to file a return and who are:

(1) Partners in a partnership deriving income from a
West Virginia source or sources; or

(2) Shareholders of a corporation having income from a
West Virginia source or sources and which made an election
under Section 1362(a) of the Internal Revenue Code (S
corporations) for the taxable year; or

(3) Beneficiaries who received a distribution (actual or
deemed) from an estate or trust having income from a West
Virginia source or sources may, upon payment of a composite return processing fee of $50, file a composite return in accordance with the provisions of this section.

(b) In filing a composite return and determining the tax due thereon, no personal exemptions may be utilized, and the rate of tax shall be six and one-half percent. The entity or entities, to which the composite return relates are responsible for collection and remittance of all income tax due at the time the return is filed.

(c) The composite return shall be filed in a manner and form acceptable to and in accordance with instructions from the commissioner, and need not be signed by all nonresident individuals on whose behalf the return is filed: Provided, That the return is signed by a partner, in the case of a partnership, an equity owner of any other pass-through entity a corporate officer, in the case of a corporation, by a trustee, in the case of a trust or by an executor or administrator in the case of an estate.

(d) For the purposes of this section, a composite return means a return filed on a group basis as though there was one taxpayer, and sets forth the name, address, taxpayer identification number and percent ownership or interest of each nonresident individual who consents to be included in the composite return in addition to return information as that term is defined in §11-10-5d of this code; the term includes block filing: Provided, That nothing in this section may prohibit a nonresident from also filing a separate nonresident personal income tax return for the taxable year and a separate return shall be filed if the nonresident has income from any other West Virginia source. If a separate return is also filed for the taxable year, the nonresident shall be allowed credit for his or her share of the tax remitted with the composite return for that taxable year.

(e) This section, as amended in the year 2019, shall apply to composite returns filed after December 31, 2018.

(a) Unless the provision of §11-21A-1 et seq. of this code apply, if the amount of a taxpayer’s federal taxable income reported on his or her federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within 90 days after the final determination of such change, correction, or renegotiation, or as otherwise required by the Tax Commissioner, and shall concede the accuracy of the determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within 90 days thereafter an amended return under this article, and shall give such information as the Tax Commissioner may require. The Tax Commissioner may by rule prescribe such exceptions to the requirements of this section as he or she determines appropriate.

(b) (1) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination, or within the period provided in §11-10-14 of this code, whichever period expires later.

(2) Within two years of the date of the final determination, or within the period provided in §11-10-14 of this code, whichever period expires later, the Tax Commissioner may allow a credit, make a refund, or mail to the taxpayer a notice of proposed overpayment resulting from the final federal determination.

(c) For the purposes of this section, assessments under a partial agreement, closing agreement covering specific matters, jeopardy or advance payment are considered part
of the final determination and must be submitted to the Tax Commissioner with the final determination.

(d) If a partial agreement, a closing agreement covering specific matters or any other agreement with the United States Treasury Department would be final except for a federal extension still open for flow-through adjustments from other entities or other jurisdictions, the final determination is the date the taxpayer signs the agreement. Flow-through adjustments include, but are not limited to, items of income gain, loss and deduction that flow through to equity owners, of a partnership, or other pass-through entity. Flow-through adjustments are finally determined based on criteria specified in §11-21-59(g) of this code.

(e) The Tax Commissioner is not required to issue refunds based on any agreement other than a final determination.

(f) If a taxpayer has filed an amended federal return, and no corresponding West Virginia amended return has been filed with the Tax Commissioner, then the period of limitations for issuing a notice of assessment shall be reopened and shall not expire until three years from the date of delivery to the Tax Commissioner by the taxpayer of the amended federal return. However, upon the expiration of the period of limitations as provided in §11-10-15 of this code, then only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing West Virginia income, deductions, gains, losses, credits, and the effect of such adjustments on West Virginia allocations and apportionments.

(g) For the purposes of this section, “final determination” means the appeal rights of both parties have expired or have been exhausted relative to the tax year for federal income tax purposes.
(h) The amendments made to this section in the year 2019 shall apply, without regard to taxable year, to federal determinations that become final on or after the effective date of the amendments to this section in the year 2019.


(a) If the amount of any individual taxpayer’s income tax reported on a return filed with any other state for any taxable year is changed or corrected by such state as a result of an examination conducted by a competent authority of the state, and the taxpayer previously claimed a credit for such tax pursuant to §11-21-20 of this code, the taxpayer shall file an amended return, or such other form as the Tax Commissioner may prescribe, reporting the effects of the change or correction on the taxpayer’s West Virginia personal income tax within one year after the final determination of the change or correction, or as otherwise required by the Tax Commissioner, and shall concede the accuracy of such determination, or declare wherein it is erroneous. However, if the Tax Commissioner has sufficient information from which to compute the proper additional tax and the taxpayer has paid the tax, then the taxpayer is not required to file an amended West Virginia personal income tax return. Any taxpayer filing an amended income tax return with any other state that results in a change to the taxpayer’s West Virginia personal income tax shall also file an amended return within one year thereafter under this article and shall provide such information as the Tax Commissioner may require. The Tax Commissioner may by rule prescribe such exceptions to the requirements of this section as the commissioner considers appropriate.

(b) For the purposes of this section, “final determination” means the appeal rights of both parties have expired or have been exhausted relative to the tax year.

(c) This section amended in the year 2019 shall apply, without regard to the taxable year, to federal determinations.
that become final on or after the effective date of this section enacted in the year 2019.

§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

(a) General rule. — For the privilege of doing business in this state or deriving rents or royalties from real or tangible personal property located in this state, including, but not limited to, natural resources in place and standing timber, a partnership, S corporation, estate or trust, which is treated as a pass-through entity for federal income tax purposes and which has taxable income for the taxable year derived from or connected with West Virginia sources any portion of which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary, as the case may be, shall pay a withholding tax under this section, except as provided in subsections (c) and (k) of this section.

(b) Amount of withholding tax. —

(1) In general. — The amount of withholding tax payable by any partnership, S corporation, estate or trust, under subsection (a) of this section, shall be equal to four percent of the effectively connected taxable income of the partnership, S corporation, estate or trust, as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate: Provided, That for taxable years commencing on or after January 1, 2008, the amount of withholding tax payable by any partnership, S corporation, estate or trust, under subsection (a) of this section, shall be equal to six and one-half percent of the effectively connected taxable income of the partnership, S corporation, estate or trust, as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate.
(2) Credits against tax. — When determining the amount of withholding tax due under this section, the pass-through entity may apply any tax credits allowable under this chapter to the pass-through entity which pass through to the nonresident distributees: Provided, That in no event may the application of any credit or credits reduce the tax liability of the distributee under this article to less than zero.

(c) When withholding is not required. — Withholding may not be required:

(1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision, a person is exempt from the tax imposed by this article only if such person is, by reason of that person’s purpose or activities, exempt from paying federal income taxes on such person’s West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or §11-24-1 et seq. of this code; or

(2) On distributions to a corporation which is exempt from the tax imposed by §11-24-1 et seq. of this code. For purposes of this subdivision, a corporation is exempt from the tax imposed by §11-24-1 et seq. of this code only if the corporation, by reason of its purpose or activities is exempt from paying federal income taxes on the corporation’s West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by §11-24-1 et seq. of this code provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable year filed under this article or §11-24-1 et seq. of this code; or

(3) On distributions when compliance will cause undue hardship on the pass-through entity: Provided, That no pass-
through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his or her discretion, approves in writing the pass-through entity’s written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or

(4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for federal income tax is not treated as a partnership under this article and is not required to withhold under this section. However, such unincorporated organizations shall make and file with the Tax Commissioner a true and accurate return of information under §11-21-58(c) of this code, under such rules and in such form and manner as the Tax Commissioner may prescribe, setting forth: (A) The amount of fixed or determinable gains, profits, and income; and (B) the name, address and taxpayer identification number of persons receiving fixed or determinable gains, profits or income from the nonpartnership venture.

(5) Publicly traded partnerships. — A publicly traded partnership, as defined in §11-21A-1 of this code, that is treated as a partnership for federal income tax purposes for the taxable year, is exempt from the withholding requirements of §11-21-71a of this code, if the following
information is provided to the Tax Commissioner: The name, address, taxpayer identification number, and West Virginia source income of each partner that had an interest in the publicly traded partnership during the taxable year. This information shall be provided in an electronic format approved by the Tax Commissioner.

(d) Payment of withheld tax. —

(1) General rule. — Each partnership, S corporation, estate or trust, required to withhold tax under this section, shall pay the amount required to be withheld to the Tax Commissioner no later than:

(A) S corporations. — The 15th day of the third month following the close of the taxable year of the S corporation along with the annual information return due under §11-24-1 et seq. of this code, unless paragraph (C) of this subdivision applies.

(B) Partnerships, estates, and trusts. — The 15th day of the fourth month following the close of the taxable year of the partnership, estate or trust, with the annual return of the partnership, estate or trust due under this article, unless paragraph (C) of this subdivision applies: Provided, That for tax years beginning after December 31, 2015, partnerships shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return of the partnership due under this article, on the 15th day of the third month following the close of the taxable year of the partnership, unless paragraph (C) of this subdivision applies.

(C) Composite returns. — The 15th day of the fourth month of the taxable year with the composite return filed under §11-21-51a of this code: Provided, That for tax years beginning after December 31, 2015, partnerships or partners in a partnership filing composite returns under §11-21-51a of this code shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return due
under this article, on the 15th day of the third month following the close of the taxable year.

(2) Special rules. —

(A) Where there is extension of time to file return. — An extension of time for filing the returns referenced in subdivision (1) of this subsection does not extend the time for paying the amount of withholding tax due under this section. In this situation, the pass-through entity shall pay, by the date specified in subdivision (1) of this subsection, at least 90 percent of the withholding tax due for the taxable year, or 100 percent of the tax paid under this section for the prior taxable year, if such taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing the return and the amount of tax due with such return is 10 percent or less of the tax due under this section for the taxable year, no additions to tax may be imposed under §11-10-1 et seq. of this code with respect to balance so remitted. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

(B) Deposit in trust for Tax Commissioner. — The Tax Commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section, at any earlier time or times.

(e) Effectively connected taxable income. — For purposes of this section, the term “effectively connected
taxable income” means the taxable income or portion thereof of a partnership, S corporation, estate or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under §11-21-32 of this code and such rules as the Tax Commissioner may prescribe, whether the amount is actually distributed or is determined to have been distributed for federal income tax purposes.

(f) Treatment of nonresident partners, S corporation shareholders, or beneficiaries of a trust or estate. —

(1) Allowance of credit. — Each nonresident partner, nonresident shareholder, or nonresident beneficiary shall be allowed a credit for such partner’s or shareholder’s or beneficiary’s share of the tax withheld by the partnership, S corporation, estate or trust under this section: Provided, That when the distribution is to a corporation taxable under §11-24-1 et seq. of this code, the credit allowed by this section shall be applied against the distributee corporation’s liability for tax under §11-24-1 et seq. of this code.

(2) Credit treated as distributed to partner, shareholder, or beneficiary. — Except as provided in rules, a nonresident partner’s share, a nonresident shareholder’s share, or a nonresident beneficiary’s share of any withholding tax paid by the partnership, S corporation, estate or trust under this section shall be treated as distributed to the partner by the partnership, or to the shareholder by the S corporation, or to the beneficiary by the estate or trust on the earlier of:

(A) The day on which the tax was paid to the Tax Commissioner by the partnership, S corporation, estate, or trust; or

(B) The last day of the taxable year for which the tax was paid by the partnership, S corporation, estate, or trust.
(g) **Regulations.** — The Tax Commissioner shall prescribe such rules as may be necessary to carry out the purposes of this section.

(h) **Information statement.** —

(1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the Tax Commissioner, showing the amount of West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate or trust, to the nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the Tax Commissioner may require.

(2) A copy of the information statements required by this subsection shall be filed with the West Virginia return filed under this article (or §11-24-1 et seq. of this code for S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement shall be furnished to each nonresident distributee on or before the due date of the pass-through entity’s return under this article or §11-24-1 et seq. of this code for the taxable year, including extensions of time for filing such return, or such later date as may be allowed by the Tax Commissioner.

(i) **Liability for withheld tax.** — Every person required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years (of such persons) beginning after December 31, 1991, except as otherwise provided in this section. The amount of tax required to be withheld and paid over to the Tax Commissioner shall be considered the tax of the partnership, estate, or trust, as the case may be, for purposes of §11-9-1 et seq. and §11-10-1 et seq. of this code. Any
amount of tax withheld under this section shall be held in
trust for the Tax Commissioner. No partner, S corporation
shareholder, or beneficiary of a trust or estate, may have a
right of action against the partnership, S corporation, estate,
or trust, in respect to any moneys withheld from the person’s
distributive share and paid over to the Tax Commissioner in
compliance with or in intended compliance with this
section.

(j) *Failure to withhold.* — If any partnership, S
corporation, estate or trust fails to deduct and withhold tax
as required by this section and thereafter the tax against
which the tax may be credited is paid, the tax so required to
be deducted and withheld under this section may not be
collected from the partnership, S corporation, estate, or
trust, as the case may be, but the partnership, S corporation,
estate, or trust may not be relieved from liability for any
penalties or interest on additions to tax otherwise applicable
in respect of the failure to withhold.

(k) *Distributee agreements.* —

(1) The Tax Commissioner shall permit a nonresident
distributee to file with a pass-through entity, on a form
prescribed by the Tax Commissioner, the agreement of the
nonresident distributee: (A) To timely file returns and make
timely payment of all taxes imposed by this article or §11-24-1
et seq. of this code in the case of a C corporation, on
the distributee with respect to the effectively connected
taxable income of the pass-through entity; and (B) to be
subject to personal jurisdiction in this state for purposes of
the collection of any unpaid income tax under this article (or
§11-24-1 et seq. of this code in the case of a C corporation),
 together with related interest, penalties, additional amounts
and additions to tax, owed by the nonresident distributee.

(2) A nonresident distributee electing to execute an
agreement under this subsection shall file a complete and
properly executed agreement with each pass-through entity
for which this election is made, on or before the last day of
the first taxable year of the pass-through entity in respect of which the agreement applies. The pass-through entity shall file a copy of that agreement with the Tax Commissioner as provided in subdivision (5) of this subsection.

(3) After an agreement is filed with the pass-through entity, that agreement may be revoked by a distributee only in accordance with rules promulgated by the Tax Commissioner.

(4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity may not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee’s continuing failure to comply with the terms of the agreement.

(5) The pass-through entity shall file with the Tax Commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or §11-24-1 et seq. of this code if S corporations. If the pass-through entity fails to timely file with the Tax Commissioner a copy of an agreement executed by a distributee and furnished to the pass-through entity in accordance with this section, then the pass-through entity shall remit to the Tax Commissioner an amount equal to the amount that should have been withheld under this section from the nonresident distributee. The pass-through entity may recover payment made pursuant to the preceding sentence from the distributee on whose behalf the payment was made.

(1) Definitions. — For purposes of this section, the following terms mean:
Corporation. — The term “corporation” includes associations, joint stock companies, and other entities which are taxed as corporations for federal income tax purposes.

A) C corporation. — The term “C corporation” means a corporation which is not an S corporation for federal income tax purposes.

B) S corporation. — The term “S corporation” means a corporation for which a valid election under Section 1362(a) of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

Distributee. — The term “distributee” includes any partner of a partnership, any shareholder of an S corporation and any beneficiary of an estate or trust that is treated as a pass-through entity for federal income tax purposes for the taxable year of the entity, with respect to all or a portion of its income.

Internal Revenue Code. — The term “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, through the date specified in §11-21-9 of this code.

Nonresident distributee. — The term “nonresident distributee” includes any individual who is treated as a nonresident of this state under this article; and any partnership, estate, trust, or corporation whose commercial domicile is located outside this state.

Partner. — The term “partner” includes a member of a partnership as that term is defined in this section, and an equity owner of any other pass-through entity.

Partnership. — The term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. “Partnership” does not include an
unincorporated organization which, under Section 761 of the Internal Revenue Code, is not treated as a partnership for the taxable year for federal income tax purposes.

(7) “Pass-through entity” means any partnership or other business entity, that is not subject to tax under §11-24-1 et seq. of this code, imposing tax on C corporations or other entities taxable as a C corporation for federal income tax purposes.

(8) **Taxable period.** — The term “taxable period” means, if an S corporation, any taxable year or portion of a taxable year during which a corporation is an S corporation.

(9) **Taxable year of the pass-through entity.** — The term “taxable year of the pass-through entity” means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

(m) **Effective date.** — The provisions of this section shall first apply to taxable years of pass-through entities beginning after December 31, 1991.

(n) This section as amended in the year 2019 shall apply, without regard to the taxable year, to taxes owed attributable to federal determinations that become final on or after the effective date of this section enacted in the year 2019.

**ARTICLE 21A. ADDITIONAL INCOME TAXES DUE TO FEDERAL PARTNERSHIP ADJUSTMENTS.**


The following definitions apply for the purposes of this article:

(1) “Administrative adjustment request” means an administrative adjustment request filed by a partnership under I.R.C. § 6227.
(2) “Audited partnership” means a partnership subject to a federal adjustment resulting from a partnership level audit resulting in a federal adjustment.

(3) “C corporation” means any corporation that is taxed separately from its owners for federal income tax purposes and included a pass-through entity that elects to be treated as a corporation for federal income tax purposes.

(4) “Composite return partner” means a partner in a partnership that was required to be included in a West Virginia composite income tax return filed pursuant to §11-21-51a of this code in the reviewed year.

(5) “Corporate partner” means a partner that is subject to tax under §11-24-1 et seq. of this code.

(6) “Date of each final federal determination” means the date on which each adjustment or resolution resulting from an Internal Revenue Service (IRS) examination is assessed pursuant to I.R.C. § 6203.

(7) “Direct partner” means a partner that holds an interest directly in a partnership or pass-through entity.

(8) “Entity” means any person that is not an individual.

(9) “Exempt partner” means a partner that is exempt from taxation under §11-21-1 et seq. or §11-24-1 et seq. of this code except on unrelated business taxable income.

(10) “Federal adjustment” means a change to an item or amount determined under the Internal Revenue Code that is used by a taxpayer to compute West Virginia tax owed whether that change results from action by the IRS, including a partnership level audit, or the filing of an amended federal return, federal refund claim, or an administrative adjustment request by the taxpayer. A federal adjustment is positive to the extent that it increases state taxable income as determined under §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, and is negative.
to the extent that it decreases state taxable income as
determined under §11-21-1 et seq. or §11-24-1 et seq. of this
code, as applicable.

(11) “Federal adjustments report” includes methods or
forms required by the Tax Commissioner for use by a
taxpayer to report federal adjustments, including an
amended West Virginia tax return, information return, or a
uniform multistate report.

(12) “Federal election for alternative payment” refers to
the election described in I.R.C. § 6226, relating to the
alternative to payment of the imputed underpayment by
partnership.

(13) “Federal partnership representative” means the
person the partnership designates, for the taxable year, as
the partnership’s representative, or the person the IRS has
appointed to act as the federal partnership representative
pursuant to I.R.C. § 6223(a).

(14) “Final determination date” means the following:

(A) Except as provided in §11-21A-1(14)(B) and (C) of
this code, if the federal adjustment arises from an IRS audit,
or other action by the IRS, the final determination date is the
first day on which no federal adjustments arising from that
audit, or other action remain to be finally determined,
whether by IRS decision with respect to which all rights of
appeal have been waived or exhausted, by agreement, or, if
appealed or contested, by a final decision with respect to
which all rights of appeal have been waived or exhausted.
For agreements required to be signed by the IRS and the
taxpayer, the final determination date is the date on which
the last party signed the agreement.

(B) For federal adjustments arising from an IRS audit or
by other action of the IRS, if the taxpayer was included in a
combined report filed under §11-24-13a of this code, the
final determination date means the first day on which no
related federal adjustments arising from that audit remain to be finally determined, as described in §11-21A-1(14)(A) of this code for the entire group.

(C) If the federal adjustment results from filing an amended federal return, a federal refund claim, or an administrative adjustment request, or if a federal adjustment reported is on an amended federal return or other similar report filed pursuant to I.R.C. § 6225(c), the final determination date is the day on which the amended return, refund claim, or administrative adjustment request or other similar report was filed.

(15) “Final federal adjustment” means a federal adjustment after the final determination date for that federal adjustment has passed.

(16) “Indirect partner” means a partner in a partnership or other pass-through entity that itself holds an indirect interest directly, or through another indirect partner, in a partnership or other pass-through entity.

(17) “Interest” in an entity means an ownership or beneficial interest in an entity.

(18) “Internal Revenue Code” or “I.R.C.” means the Internal Revenue Code of 1986, as codified at 26 United States Code (U.S.C.) Section 1, et seq., as defined in §11-21-9 or §11-24-3 of this code, as applicable, for the taxable year, and any applicable regulations as promulgated by the United States Department of the Treasury.

(19) “Internal Revenue Service” or “IRS” means the Internal Revenue Service of the United States Department of the Treasury.

(20) “Nonresident partner” means an individual, trust or estate partner that is not a resident as defined in §11-21-7 of this code.
(21) “Partner” means a person that holds an interest directly or indirectly in a partnership or other pass-through entity.

(22) “Partnership” means an entity subject to taxation under Subchapter K of the Internal Revenue Code.

(23) “Partnership adjustment” means any adjustment to a partnership-related item.

(24) “Partnership level audit” means an examination by the IRS at the partnership level pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the I.R.C., as enacted by the Bipartisan Budget Act of 2015, Public Law 114-74, which results in federal adjustments.

(25) “Partnership-related item” means:

(A) Any item or amount with respect to the partnership (without regard to whether or not the item or amount appears on the partnership’s return and including an imputed underpayment and any item or amount relating to any transaction with, basis in, or liability of, the partnership) which is relevant (determined without regard to this article) in determining the tax liability of any person under §11-21-1 et seq. or §11-24-1 et seq. of this code; and

(B) Any partner’s distributive share of any item of amount described in paragraph (A) of this subdivision.

(26) “Pass-through entity” means any partnership or other business entity that is not subject to tax under §11-24-1 et seq., imposing tax on C corporations or other entities taxable as a corporation.

(27) “Person” means and includes, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, limited liability company, other pass-through entity, joint venture, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, any other group or combination
acting as a unit, and also any officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of §11-21-1 et seq., §11-21A-1 et seq., or §11-24-1 et seq. of this code.

(28) “Publicly traded partnership” means either of the following:

(A) A publicly traded partnership within the meaning of I.R.C. § 7704; or

(B) Any other partnership where more than 10 percent of the profits or capital interest is owned directly or indirectly by a partnership described in §11-21A-1(28)(A) of this code.

(29) “Reallocation adjustment” means a federal adjustment resulting from a partnership level audit, or an administrative adjustment request, that changes the shares of one or more items of partnership income, gain, loss, expense or credit allocated to direct partners. A positive reallocation adjustment means the portion of a reallocation adjustment that would increase federal taxable income for one or more direct partners, and a negative reallocation adjustment means the portion of a reallocation adjustment that would decrease federal income for one or more direct partners pursuant to regulations under I.R.C. § 6225.

(30) “Resident partner” means an individual, trust, or estate partner that has his or her domicile in this state or is a resident of this state for tax purposes, as defined in §11-21-7 of this code, for the relevant period.

(31) “Reviewed year” means the taxable year of a partnership that is subject to a partnership level audit from which federal adjustments arise.
“S corporation” means a corporation or pass-through entity that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code.

“State imputed underpayment” means the netting of all final adjustments to partnership-related items at the entity level for the reviewed year (excluding any reallocations of income, expenses, gains, and losses among partners), apportioned and allocated to West Virginia at the entity level, and multiplied by the applicable West Virginia income tax rate(s) set forth in §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, for the taxable year.

“State partnership adjustment report” means a form prescribed by Tax Commissioner that identifies the partnership’s direct partners, each partner’s share of adjustments to partnership-related items, and any reallocations of income, expenses, gains, and losses among such partners, that arise directly or indirectly from a partnership level audit.

“State partnership audit” means an examination by the Tax Commissioner at the partnership or pass-through entity level which results in adjustments to partnership or pass-through entity related items or reallocations of income, expenses, gains, losses, credits, and other attributes among the partners for the reviewed year.

“State partnership representative” means the person the partnership designates to be the partnership’s representative for West Virginia tax purposes for the reviewed year pursuant to §11-21A-3 of this code and shall be the federal partnership representative in absence of the partnership designating a West Virginia partnership representative.

“Subsequent affected year” means a tax year subsequent to the reviewed year in which a federal adjustment arising from an audit of that reviewed year affects the West Virginia income tax owed by a taxpayer.
(38) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or his or her delegate, as provided in §11-1-1 of this code.

(39) “Taxpayer” means any person subject to the tax imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, unless the context clearly indicates otherwise, including a partnership subject to a partnership level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership.

(40) “This state” or “state” means the State of West Virginia.

(41) “Tiered partner” means any partner that is a partnership or other pass-through entity.

(42) “Tiered partnership” means any partnership or other pass-through entity that has one or more tiered partners.

(43) “Unrelated business taxable income” has the same meaning as defined in I.R.C. § 512.

(44) “West Virginia tax” means the tax imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, plus interest and additions to tax imposed pursuant to §11-10-1 et seq. of this code.

(45) “Withholding partner” means a partner in a partnership for whom the partnership was required to withhold West Virginia tax pursuant to §11-21-71a of this code or administrative authority for the reviewed year.

§11-21A-2. Reporting adjustments to federal taxable income – General rule.

(a) Except in the case of final federal adjustments which are required to be reported by a partnership and its partners using the procedures in §11-21A-3 of this code, and final federal adjustments required to be reported for federal
purposes under I.R.C. §6225(a)(2), a taxpayer shall report
and pay any West Virginia income tax due with respect to
final federal adjustments arising from an audit or other
action by the IRS or reported by the taxpayer on a timely
filed amended federal income tax return including a return
or similar document filed pursuant to I.R.C. §6225(c), or
federal claim for refund by filing a federal adjustments
report with the Tax Commissioner for the reviewed year
and, if applicable, pay the additional West Virginia tax
owed by the taxpayer not later than 180 days after the final
determination date.

(b) Notwithstanding §11-21-59 and §11-24-20 of this
code, if any item required to be shown on a federal
partnership return, including any gross income, deduction,
penalty, credit, or tax for any year of any partnership,
including any amount of any partner’s distributive share, is
changed or corrected by the Commissioner of Internal
Revenue or other officer of the United States or other
competent authority, and the partnership is issued an
adjustment under I.R.C. § 6225, or makes a federal election
for alternative payment, by the Internal Revenue Service as
part of a partnership level audit, the partnership shall report
each change or correction with the Tax Commissioner for
the reviewed year within six months after the date of each
final federal determination. The report of adjustments or
return reporting the adjustments shall be sufficiently
detailed to allow computation of the West Virginia tax
change under §11-21-1 et seq. or §11-24-1 et seq. of this
code, as applicable, resulting from the federal adjustment
and shall be reported in the form and manner as prescribed
by the Tax Commissioner.

§11-21A-3. Reporting federal adjustments — partnership
level audit and administrative adjustment request.

(a) General. — Except for adjustments required to be
reported for federal purposes pursuant to I.R.C. §
6225(a)(2), and the distributive share of adjustments that
have been reported as required by §11-21A-2 of this code,
partnerships and partners shall report final federal adjustments arising from a partnership level adjustment, or an administrative adjustment request, and make payments as required by this section of the code.

(b) State partnership representative. —

(1) With respect to an action required or permitted to be taken by a partnership under this section of the code and a proceeding under §11-10A-1 et seq. of this code with respect that action, the state partnership representative for the reviewed year has the sole authority to act on behalf of the partnership, and its direct partners and indirect partners shall be bound by those actions.

(2) The state partnership representative for the reviewed year is the partnership’s federal partnership representative unless the partnership designates in writing another person as its state partnership representative.

(3) The Tax Commissioner may establish reasonable qualifications for and procedures for designating a person, other than the federal partnership representative, to be the state partnership representative.

(c) Reporting and payment requirements for partnerships subject to a final federal adjustment and direct partners. — Final federal adjustments subject to the requirements of §11-21A-3 of this code, except for those subject to a properly made election under §11-21A-3(d) of this code, shall be reported as follows:

(1) No later than 90 days after the final determination date, the partnership shall:

(A) File a completed federal adjustment report with the Tax Commissioner, including information as required by the Tax Commissioner; and
(B) Notify each of its direct partners of their distributive share of the final federal adjustments including information as required by the Tax Commissioner; and

(C) File an amended composite return for direct partners as permitted under §11-21-51a of this code and/or an amended withholding return for direct partners under §11-21-71a of this code and pay the additional amount due under §11-21-1 et seq. and §11-24-1 et seq. of this code, as applicable, that would have been due had the final federal adjustments been reported properly as required.

(2) Except as provided in §11-21A-4 of this code for minimal tax liabilities, no later than 180 days after the final determination date, each direct partner that is taxed under §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, shall:

(A) File a federal adjustment report reporting their distributive share of the adjustments reported to them under §11-21A-3(c)(1)(B) of this code as required by West Virginia law; and

(B) Pay any additional amount of tax due as if final federal adjustments had been properly reported, plus any additions to tax and interest due under §11-10-1 et seq. of this code and less any credit for related amounts paid or withheld and remitted on behalf of the direct partner under §11-21A-3(c)(1)(C) of this code.

(d) Election — partnership pays. — Subject to the limitations in this subsection, an audited partnership making an election under §11-21A-3(d) of this code shall:

(1) No later than 90 days after the final determination date, file a completed federal adjustment report, including information as required by rule or instruction of the Tax Commissioner, and notify the Tax Commissioner that it is making the election under §11-21A-3(d) of this code;
(2) No later than 180 days after the final determination date, pay an amount, determined as follows, in lieu of taxes owed by its direct partners and indirect partners:

(A) Exclude from final federal adjustments the distributive share of these adjustments reported to a direct exempt partner not subject to tax under § 11-21-1 et seq. or §11-24-1 et seq. of this code;

(B) For the total distributive shares of the remaining final federal adjustments reported to direct corporate partners subject to tax under §11-24-1 et seq. of this code, and to direct exempt partners subject to tax under §11-24-1 et seq. of this code, apportion and allocate the adjustments as provided in §11-24-7 of this code, as applicable, and multiply the resulting amount by the highest tax rate under §11-24-1 et seq. of this code;

(C) For the total distributive shares of the remaining final federal adjustments reported to nonresident direct partners subject to tax under §11-21-1 et seq. of this code, determine the amount of the adjustments which is West Virginia source income under §11-21-30 of this code, and multiply the resulting amount by the highest tax rate under §11-21-1 et seq. of this code;

(D) For the total distributive shares of the remaining final federal adjustments reported to tiered partners:

(i) Determine the amount of the adjustments which is of a type that it would not be subject to sourcing to West Virginia under §11-21-1 et seq. of this code; allocate and apportion the income as provided in §11-21-1 et seq. of this code; and then determine the portion of this amount that would be sourced to this state applying these rules.

(ii) Determine the amount of such adjustments which is of a type that it would not be subject to sourcing to West Virginia by a nonresident under §11-21-30 of this code.
(iii) Determine the portion of the amount determined in §11-21A-3(c)(2)(D)(ii) of this code that can be established under rule issued by the Tax Commissioner, to be properly allocable to nonresident indirect partners or other partners not subject tax on the adjustments; or that can be excluded under procedures for modified reporting and payment method allowed under §11-21A-3(f) of this code.

(E) Multiply the total of the amounts determined in §11-21A-3(d)(2)(D)(i) and (ii) of this code reduced by the amount determined in §11-21A-3(d)(2)(D)(iii) of this code by the highest tax rate under §11-21-1 et seq. of this code that applies to individuals and/or estates and trusts;

(F) For the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to tax under §11-21-1 et seq. of this code, multiply that amount by the highest tax rate under §11-21-1 et seq. of this code that applies to individuals and/or estates and trusts;

(G) Add the amounts determined in §11-21A-3(d)(2)(B), (D), (E), and (F) of this code;

(3) Final federal adjustments subject to this election exclude:

(A) The distributive share of final audit adjustments that under §11-24-1 et seq. of this code must be included in the unitary business income of any direct or indirect corporate partner, provided that the audited partnership can reasonably determine this amount; and

(B) Any final federal adjustments resulting from an administrative adjustment request.

(4) An audited partnership not otherwise subject to any reporting or payment obligation to this state that makes an election under §11-21A-3(d) of this code consents to be subject to this state’s laws related to reporting, assessment,
payment, and collection of West Virginia income tax calculated under the election.

(e) Tiered partners. — The direct and indirect partners of an audited partnership that are tiered partners, and all of the partners of those tiered partners that are subject to tax under §11-21-1 et seq. or §11-24-1 et seq. of this code, as appropriate, are subject to the reporting and payment requirements of §11-21A-3(b) of this code and the tiered partners are entitled to make the elections provided in §11-21A-3(c) and (e) of this code. The tiered partners or their partners shall make required reports and payments no later than 90 days after the time for filing and furnishing statements to tiered partners and their partners as established under I.R.C. Section 6226 and the regulations thereunder. The Tax Commissioner may promulgate rules under §29A-3-1 et seq. of this code to establish procedures and interim time periods for the reports and payments required by tiered partners and their partners and for making the elections under §11-21A-3 of this code.

(f) Modified reporting and payment method. — Under procedures adopted by and subject to the approval of the Tax Commissioner in his or her sole discretion, an audited partnership or tiered partner may enter into an agreement with the Tax Commissioner to utilize an alternative reporting and payment method, including applicable time requirements or any other provision of §11-21A-3 of this code, if the audited partnership or tiered partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, additions to tax, and interest due under the provisions of §11-21A-3 of this code. Application for approval of an alternative reporting and payment method shall be made by the audited partnership or tiered partner within the time for election as provided in §11-21A-3(d) or §11-21A-3(e) of this code as appropriate.

(g) Effect of election by audited partnership or tiered partner and payment of amount due. — (1) The election
made pursuant to §11-21A-3(d) or §11-21A-3(f) of this code is irrevocable, unless the Tax Commissioner, in his or her sole discretion, determines otherwise.

(2) If properly reported and paid by the audited partnership or tiered partner, the amount determined in §11-21A-3(c) of this code, or similarly under an optional election under §11-21A-3(f) of this code, will be treated as paid in lieu of taxes owed by its direct and indirect partners, to the extent applicable, on the same final federal adjustments. The direct partners or indirect partners may not take any deduction or credit for this amount or claim a refund of this amount in this state. Nothing in §11-21A-3(f) of this code may preclude a direct resident partner from claiming a credit against taxes paid to this state pursuant to §11-21-1 et seq. of this code, any amounts paid by the audited partnership or tiered partner on the resident partner’s behalf to another state in accordance with the provisions of §11-21-1 et seq. of this code allowing credit for taxes paid to another state.

(h) **Failure of audited partnership or tiered partner to report or pay.** — Nothing in §11-21A-3 of this code prevents the Tax Commissioner from assessing direct partners, or indirect partners, for taxes they owe, using the best information available to the commissioner, if a partnership or tiered partner fails to timely make any report or payment required by §11-21A-3 of this code for any reason.

§11-21A-4. De minimis exception.

The Tax Commissioner, in his or her discretion, may promulgate rules, as provided in §29A-3-1 et seq. of this code, to establish a de minimis amount upon which a taxpayer shall not be required to comply with §11-21A-2 and §11-21A-3 of this code.
§11-21A-5. Assessments of additional West Virginia tax, interest, and additions to tax arising from adjustments to federal taxable income; statute of limitations.

The Tax Commissioner will assess additional West Virginia tax, interest, and additions to tax arising from federal adjustments arising from an audit by the Internal Revenue Service, including a partnership level audit, or reported by the taxpayer on an amended federal income tax return or as part of an administrative adjustment request by the following dates:

(1) *Timely reported federal adjustments.* — If a taxpayer files with the Tax Commissioner a federal adjustments report or an amended West Virginia tax return as required within the period specified in §11-21A-2 or §11-21A-3 of this code, the Tax Commissioner may assess any West Virginia amounts, including in-lieu-of amounts, of taxes, interest, and additions to tax arising from those federal adjustments if the Tax Commissioner issues a notice of the assessment to the taxpayer by a date which is the latest of the following:

(A) The expiration of the limitations period specified in §11-10-15 of this code setting forth normal limitations period; or

(B) The expiration of the one-year period following the date of filing with the Tax Commissioner of the federal adjustments report under §11-21A-3 of this code.

(2) *Untimely reported federal adjustments.* — If the taxpayer fails to file the federal adjustments report within the period specified in §11-21A-2 or §11-21A-3 of this code, as appropriate, or the federal adjustments report filed by the taxpayer omits federal adjustments or understates the correct amount of West Virginia tax owed, the Tax Commissioner may assess amounts or additional amounts, including in-lieu-of amounts, taxes, interest, and additions to tax arising from the final federal adjustments, if the Tax
Commissioner mails a notice of the assessment to the taxpayer by a date which is the latest of the following:

(A) The expiration of the limitations period specified in §11-10-15 of this code setting forth limitations periods; or

(B) The expiration of the one-year period following the date the federal adjustments report was filed with the Tax Commissioner; or

(C) Absent fraud, the expiration of the six-year period following the final determination date.

§11-21A-6. Estimated West Virginia tax payments during course of federal audit.

A taxpayer may make estimated payments to the Tax Commissioner, following the process prescribed by the Tax Commissioner, of the tax expected to result from a pending Internal Revenue Service audit, prior to the due date of the federal adjustments report, without having to file the report with the Tax Commissioner. The estimated tax payments shall be credited against any tax liability ultimately found to be due to West Virginia (final West Virginia tax liability) and shall limit the accrual of further statutory interest on that amount. If the estimated tax payments exceed the final tax liability and statutory interest ultimately determined to be due, the taxpayer is entitled to a refund or credit for the excess, provided the taxpayer files a federal adjustments report or claim for refund or credit of tax pursuant to §11-10-14 or §11-21A-7 of this code, no later than one year following the final determination date.

§11-21A-7. Claims for refund or credits of West Virginia tax arising from federal adjustments made by the IRS.

(a) Notwithstanding the reporting requirement contained in §11-21A-2 or §11-21A-3 of this code, except for final federal adjustments required to be reported for federal income tax purposes under I.R.C. § 6225(a)(2), a taxpayer may file a claim for refund or credit of West
Virginia tax arising from federal adjustments made by the Internal Revenue Service on or before the later of:

(1) The expiration of the last day for filing a claim for refund or credit of West Virginia tax pursuant to §11-10-14 of this code, including any extensions; or

(2) One year from the date a federal adjustments report prescribed in §11-21A-2 or §11-21A-3 of this code, as applicable, was due to the Tax Commissioner, including any extensions pursuant to §11-21A-8 of this code.

(b) The federal adjustments report shall serve as the means for the taxpayer to report additional West Virginia tax due, report a claim for refund or credit of tax, and make other adjustments (including, but not limited to, its net operating losses) resulting from adjustments to the taxpayer’s federal taxable income.


(a) Unless otherwise agreed in writing by the taxpayer and the Tax Commissioner, any adjustments by the Tax Commissioner or by the taxpayer made after the expiration of the statute of limitations for refund and assessment set forth in §11-10-14 and §11-10-15 of this code, respectively, are limited to changes to the taxpayer’s tax liability arising from federal adjustments.

(b) The time periods provided for in this section may be extended:

(1) Automatically, upon written notice to the Tax Commissioner, by 60 days for an audited partnership, or tiered partner, which has 10,000 or more direct partners; or

(2) By written agreement between the taxpayer and the Tax Commissioner pursuant to any rule issued under this section.
(c) An extension granted under §11-21A-8 of this code for filing the federal adjustment report extends the last day prescribed by law for assessing any additional tax arising from the adjustments to federal taxable income, as provided in §11-21A-1 et seq. of this code, and the period for filing a claim for refund of credit of taxes pursuant to §11-21A-1 et seq. of this code.


This article enacted in 2019 shall apply to any adjustments to a taxpayer’s federal taxable income with a final determination date occurring for a tax year beginning after December 31, 2018.

§11-21A-10. Legislative, interpretive, and procedural rules.

The Tax Commissioner may propose for promulgation pursuant to the provisions of §29A-3-1 et seq. of this code such legislative, interpretive, and procedural rules as may be necessary to carry out the purposes of this article including, but not limited to, rules to determine the West Virginia share of federal audit adjustments.


Every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 et seq. of this code applies to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.


Every provision of the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 et seq. of this code applies to the taxes imposed by this article with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.
ARTICLE 24. CORPORATION NET INCOME TAX.


(a) Unless the provision of §11-21A-1 et seq. of this code apply, if the amount of a taxpayer’s federal taxable income reported on its federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report the change or correction in federal taxable income within 90 days after the final determination of the change, correction or renegotiation, or as otherwise required by the Tax Commissioner, and shall concede the accuracy of the determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within 90 days thereafter an amended return under this article, and shall give such information as the Tax Commissioner may require. The Tax Commissioner may by rule prescribe such exceptions to the requirements of this section as he or she deems appropriate.

(b) (1) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination (as defined in §11-21A-2 of this code), or within the period provided in §11-10-14 of this code, whichever period expires later.

(2) Within two years of the date of the final determination (as defined in §11-21A-2 of this code) or within the period provided in §11-10-14 of this code, whichever period expires later, the Tax Commissioner may allow a credit, make a refund, or mail to the taxpayer a notice of proposed overpayment resulting from the final federal determination.
(c) For the purposes of this section, assessments under a partial agreement, closing agreement covering specific matters, jeopardy or advance payment are considered part of the final determination and must be submitted to the Tax Commissioner with the final determination.

(d) If a partial agreement, a closing agreement covering specific matters, or any other agreement with the United States Treasury Department would be final except for a federal extension still open for flow-through adjustments from other entities or other jurisdictions, the final determination is the date the taxpayer signs the agreement. Flow-through adjustments include, but are not limited to, items of income gain, loss, and deduction that flow through to equity owners of a partnership, or other pass-through entity. Flow-through adjustments are finally determined based on criteria specified in §11-24-20(g) of this code.

(e) The Tax Commissioner is not required to issue refunds based on any agreement other than a final determination.

(f) If a taxpayer has filed an amended federal return, and no corresponding West Virginia amended return has been filed with the Tax Commissioner, then the period of limitations for issuing a notice of assessment shall be reopened and shall not expire until three years from the date of delivery to the Tax Commissioner by the taxpayer of the amended federal return. However, upon the expiration of the period of limitations as provided in §11-10-15 of this code, then only those specific items of income, deductions, gains, losses, or credits which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing West Virginia income, deductions, gains, losses, credits, and the effect of such adjustments on West Virginia allocations and apportionments.

(g) For the purposes of this section, “final determination” means the appeal rights of both parties have expired or have been exhausted relative to the tax year for federal income tax purposes.
The amendments made to this section in the year 2019 shall apply, without regard to taxable year, to federal determinations that become final on or after the effective date of the amendments to this section in the year 2019.

CHAPTER 245

(Com. Sub. for S. B. 502 - By Senator Blair)

[Passed March 8, 2019; in effect July 1, 2019.]
[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 section, designated §11-15-9r, relating to exemptions for the sales of investment metal bullion and investment coins.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9r. Exemption for precious metals.

(a) Notwithstanding any provision of this code to the contrary, the sale of investment metal bullion or investment coins as defined in subsections (b) and (c) of this section are exempted from the taxes imposed by this article and §11-15A-1 et seq. of this code.

(b) “Investment metal bullion” means any elementary precious metal which has been put through a process of smelting or refining, including gold, silver, platinum, and palladium, and which is in such a state or condition that its value depends upon its content and not its form. “Investment metal bullion” does not include precious metal which has been assembled, fabricated, manufactured, or processed in one or more industrial, professional, aesthetic, or artistic uses.
“Investment coins” means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal and of the United States or any foreign nation with a fair market value greater than any nominal value of such coins. “Investment coins” does not include jewelry or works of art made of coins, nor does it include commemorative medallions.

CHAPTER 246

(Com. Sub. for S. B. 546 - By Senators Takubo, Maroney and Stollings)

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-27-39, relating to creating a tax on certain acute care hospitals; defining terms; imposing a tax on eligible acute care hospitals; providing exceptions to the tax; creating a fund; providing for how the funds may be spent; permitting the tax to be eligible to be matched by federal funds; providing an effective date; and providing an expiration date for the tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-39. Contingent increase of tax rate on certain eligible acute care hospitals to increase practitioner payment fee schedules.

(a) In addition to the rate of the tax imposed by §11-27-9, §11-27-15, and §11-27-38 of this code on providers of inpatient and outpatient hospital services, there shall be imposed on certain eligible acute care hospitals an
additional tax of 0.13 percent on the gross receipts received or receivable by an eligible acute care hospital that provides inpatient or outpatient hospital services in this state.

(b) For purposes of this section, the term “eligible acute care hospital” means any inpatient or outpatient hospital conducting operations in this state that is not:

(1) A state-owned or designated facility;

(2) A critical access hospital designated as a critical access hospital after meeting all federal eligibility criteria;

(3) A licensed free-standing psychiatric or medical rehabilitation hospital; or

(4) A licensed long-term acute care hospital.

(c) The provisions of this section are intended to maximize federal funding to increase practitioner payment fee schedules for practitioners employed by eligible acute care hospitals as described in this section. For the purposes of this section, the term “practitioner” means a physician licensed pursuant to the provisions of §30-3-1 et seq. and §30-14-1 et seq. of this code.

(d) The taxes imposed by this section may not be imposed or collected until the occurrence of each of the following:

(1) The West Virginia Bureau for Medical Services incorporates the payment methodology into the appropriate contracts and agreements; and

(2) The West Virginia Bureau for Medical Services receives the necessary approvals from the Centers for Medicare and Medicaid Services.

(e) There is hereby created a special fund known as the Acute Care Clearing Fund. The amount of taxes collected under this section and under §11-27-38 of this code,
including any interest, additions to tax, and penalties collected under §11-10-1 et seq. of this code, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the Acute Care Clearing Fund created by this section. The Tax Commissioner shall establish and maintain the funds collected under this section and then periodically distribute the same by the fifth day of the month following the end of the calendar quarter in which the taxes were collected. Provided, that notwithstanding any provision of the code to the contrary, the portion attributable to the taxes, any interest, additions to tax, and penalties associated with the tax imposed under §11-27-38 of this code shall be distributed into the Eligible Acute Care Provider Enhancement Account created under that section and the portion attributable to the taxes, any interest, additions to tax, and penalties associated with the tax imposed under this section shall be distributed into a new account to be created under the Medicaid State Share Fund to be designated as the Eligible Acute Care Practitioner Enhancement Account. Disbursements from the Eligible Acute Care Practitioner Enhancement Account within the Medicaid State Share Fund may be used only to support increasing practitioner payment fee schedules for practitioners employed by eligible acute care hospitals.

(f) The imposition and collection of taxes imposed by this section shall be suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting towards state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, agency, or office of the state or federal government that disqualifies the tax from counting towards
state Medicaid funds available to determine federal
financial participation for Medicaid matching funds or
creates for any reason a failure of the state to use the
assessment of the Medicaid program as described in this
section; and

(3) If the tax payments remitted by the eligible acute
care hospitals are not used to effectuate the provisions of
this section.

(g) Any funds remaining in the Eligible Acute Care
Practitioner Enhancement Account, upon the occurrence of
any of the events described in subsection (f) of this section, that
cannot be used to match eligible federal Medicaid funds for
this program, shall be transferred to the West Virginia Medical
Services Fund. These funds shall be used during the state fiscal
year in which they were transferred at the discretion of the
West Virginia Bureau for Medical Services.

(h) The provisions of this section are effective on or
after July 1, 2019.

(i) This section will expire on or after June 30, 2021,
unless otherwise extended by the Legislature.

CHAPTER 247
(S. B. 656 - By Senators Blair and Trump)

[Passed March 9, 2019; in effect July 1, 2019.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §11-10-5t and §11-10-5z of the
Code of West Virginia, 1931, as amended, all relating to
electronic filing of tax returns and electronic funds transfers
in payment of taxes; and raising to $50,000 the tax liability
threshold amount at which taxpayers must file returns electronically or pay by electronic funds transfers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5t. Payment by electronic fund transfers.

(a) The term “electronic funds transfer” means and includes automated clearinghouse debit, automated clearinghouse credit, wire transfer, and any other means recognized by the Tax Commissioner for payment of taxes.

(b) The Tax Commissioner may prescribe by emergency rules, administrative notices, forms and instructions, and the procedures and criteria to be followed by certain taxpayers in order to pay taxes by electronic funds transfer methods.

(c) The rules shall set forth the following:

(1) Acceptable indicia of timely payment;

(2) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(3) Which types of taxes to which electronic filing requirements apply for any given tax year and implementation dates: Provided, That the type of tax to which electronic funds transfer requirements apply during the first tax year is personal income tax withholding by employers;

(4) The dollar amount of tax liability per year which, when exceeded, requires or permits electronic funds transfer. Unless and until a legislative rule is promulgated or this section is amended, no person may be required to pay any tax by electronic funds transfer if the amount owed for the tax during the preceding year was less than $120,000: Provided, That for tax years beginning on or after January 1, 2019, no person may be required to pay any tax by
(5) What, if any, exceptions are allowable, and alternative methods of payment to be used for any exceptions;

(6) Procedures for making voluntary electronic funds transfer payments;

(7) Any provisions needed to implement the civil penalty created by this section; and

(8) Any other provisions necessary to ensure the timely implementation of electronic funds transfer payments.

(d) In addition to any other additions and penalties which may be applicable, there is a civil penalty for failing or refusing to use an appropriate electronic funds transfer method when required to do so. The amount of this penalty is three percent of the total tax liability which is or was to be paid by electronic funds transfer for any tax for which electronic funds transfer methods are required to be used by the taxpayer.

(e) The provisions of this section are not intended to affect the provisions of other sections of this chapter concerning filing of returns or any other provisions which are not in direct conflict with this section.

(f) The State Treasurer shall adopt any procedures or rules necessary or convenient for implementing electronic funds transfers of tax payments authorized by this section and rules adopted by the Tax Commissioner. The Treasurer shall draft any procedures and rules adopted in consultation with the Tax Commissioner and the procedures and rules may not conflict with this section or rules adopted by the Tax Commissioner.

(g) The provisions of this section become effective on or after January 1, 1998.
§11-10-5z. Electronic filing for certain persons.

(a) (1) For tax years beginning on or after January 1, 2009, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $100,000 during the immediately preceding taxable year shall file electronically all returns for all taxes administered under this article.

(2) For tax years beginning on or after January 1, 2011, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $10,000 during the immediately preceding tax year shall file electronically all returns for all taxes administered under this article.

(3) For tax years beginning on or after January 1, 2015:

(i) For returns that are required to be filed prior to January 1, 2016, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $10,000 during the immediately preceding tax year shall file electronically all such returns for all taxes administered under this article.

(ii) For returns that are required to be filed on or after January 1, 2016, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $25,000 during the immediately preceding tax year shall file electronically all returns for all taxes administered under this article.

(iii) For returns that are required to be filed on or after January 1, 2019, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $50,000 during the immediately preceding tax
35 year shall file electronically all returns for taxes 
36 administered under this article.

37 (b) The Tax Commissioner shall implement the 
38 provisions of this section using any combination of notices, 
39 forms, instructions, and rules that he or she determines 
40 necessary. All rules shall be promulgated pursuant to §29A-
41 3-1 et seq. of this code.

CHAPTER 248

(Com. Sub. for H. B. 2001 - By Delegates 
Harshbarger, P. Martin, McGeehan, Atkinson, 
Storch, Pack, Rowan, Hollen, Mandt, J. Kelly and 
Sypolt)

[Passed March 9, 2019; in effect ninety days from passage.] 
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §11-21-12 of the Code of West 
Virginia, 1931, as amended, relating to exemptions from 
personal income tax; providing for an exemption for members 
of certain uniformed services; exempting social security 
benefits from personal income tax; clarifying that tier one 
railroad retirement benefits are not subject to personal income 
tax; specifying an effective date; and removing obsolete 
language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident 
individual.

1 (a) General. — The West Virginia adjusted gross 
2 income of a resident individual means his or her federal
adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income, unless already included therein, the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and
(7) Amounts withdrawn from a medical savings account established by or for an individual under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

1. Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

2. Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

3. Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

4. The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

5. Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes:
Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first $2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first $2,000 of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies: Provided, however, That the total modification under this paragraph shall not exceed $2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen’s Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed Forces of the United States of America with the product thereof multiplied by the first $30,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2000, the first $20,000 of military retirement income, including retirement income from the regular Armed
Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) For taxable years beginning after December 31, 2017, military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2017, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year. For taxable years beginning after December 31, 2018, retirement income from the uniformed services, including the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or by this state after December 31, 2018, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year.

(D) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Decreasing modification for social security income.

(A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 et seq. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et seq., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from
federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

(B) For taxable years beginning on or after January 1, 2021, 65 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 et seq. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et seq., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

(C) For taxable years beginning on or after January 1, 2022, 100 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 et seq. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et seq., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

(D) The deduction allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return does not exceed
(9) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by any person who has attained the age of 65 on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is $8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of modifications under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(10) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is $8,000 or more, no deduction shall be allowed under this subdivision; and
(ii) Where the total modification under subdivisions (1), 
(2), (5), (6), (7), and (8) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(11) Contributions from any source to a medical savings account established by or for the individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed $2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of the Internal Revenue Code.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-21-19 of this code.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under §11-21-17 of this code.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine
their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) **Effective date.** –

(1) Changes in the language of this section enacted in the year 2000 shall apply to taxable years beginning after December 31, 2000.

(2) Changes in the language of this section enacted in the year 2002 shall apply to taxable years beginning after December 31, 2002.

(3) Changes in the language of this section enacted in the year 2019 shall apply to taxable years beginning after December 31, 2018.

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-1-9, relating to exempting short-term license holders to submit information to the Tax Commissioner once the term of the permit has expired; and requiring rulemaking.

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

**ARTICLE 1. SUPERVISION.**

§11-1-9. Holders of short-term permits and licenses to sell; rulemaking.
(a) Notwithstanding any provision of this chapter to the contrary, holders of short-term permits or licenses to sell specific items, e.g., fireworks, beer, food, or wine at festivals, may not be required to submit any information to the Tax Commissioner after the term of the permit or license has expired: Provided, That the permit or license holder has filed with the Tax Commissioner all necessary information specific to the time period the permit or license was authorized and remitted to the Tax Commissioner and the permit or license holder has remitted all taxes and fees that are due under this code. This section does not prevent the Tax Commissioner from auditing the books and records of the license or permit holder for compliance with the provisions of this code.

(b) The Tax Commissioner shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement this section.

CHAPTER 250


[Passed March 6, 2019; in effect ninety days from passage.] [Approved by the Governor on March 27, 2019.]

AN ACT to repeal §11-26-1, §11-26-2, §11-26-3, §11-26-4, §11-26-5, §11-26-6, §11-26-7, §11-26-8, §11-26-9, §11-26-10, §11-26-11, §11-26-12, §11-26-13, §11-26-14, §11-26-15, §11-26-16, §11-26-17, §11-26-19 and §11-26-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-27-3 of said code; and to amend said code by adding thereto a new section, designated §11-27-10a, all relating to imposing a health care related provider tax on certain health
care organizations; repealing an outdated tax; defining terms; establishing tax rates; requiring federal approval of tax; setting effective date; and setting a termination date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.

§11-26-1. Legislative findings.

1 [Repealed]

§11-26-2. Short title; arrangement and classification.

1 [Repealed]

§11-26-3. Definitions.

1 [Repealed]

§11-26-4. Imposition of excise tax; rate and application of tax.

1 [Repealed]

§11-26-5. Administration.

1 [Repealed]


1 [Repealed]

§11-26-7. Tax return and payment.

1 [Repealed]

§11-26-8. Extension of time for filing returns.

1 [Repealed]


1 [Repealed]

§11-26-10. Place for filing returns or other documents.

§11-26-12. Records.

§11-26-13. Refunds and credits.

§11-26-14. Cancellation of Medicaid certification for failure to pay delinquent tax.

§11-26-15. General procedure and administration.


§11-26-17. Effective dates.


§11-26-20. Transition rules; penalties; effective date.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.


(a) General. — When used in this article, words defined in subsection (b) of this section have the meaning ascribed to them in this section, except in those instances where a
different meaning is distinctly expressed or the context in which the word is used clearly indicates that a different meaning is intended.

(b) Definitions. —

“Business” includes all health care activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity. “Business” does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership, and services by a member of any other business entity on behalf of that entity, are the business of the employer, or partnership, or other business entity, as the case may be, and reportable as such for purposes of the taxes imposed by this article.

“Broad-based health care related tax” means a broad-based health care related tax as defined in Section 1903 of the Social Security Act, including a health-care related tax for which a waiver from the broad-based or uniformity requirements has been granted and is in effect by the federal Centers for Medicare and Medicaid Services pursuant to the provisions of Section 1903 of the Social Security Act and implementing regulations.

“Corporation” includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engaged in activities taxable under this article.

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

“Includes” and “including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.
“Partner” includes a member in a “partnership”, as defined in this section.

“Partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised, and which is not within the meaning of this article a trust or estate or corporation. It includes a limited liability company when such company is treated as a partnership for federal income tax purposes.

“Person” means any individual, partnership, association, company, corporation or other entity engaging in a privilege taxed under this article.

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


“Tax” means any tax imposed by this article and, for purposes of administration and collection of such tax, includes any interest, additions to tax or penalties imposed with respect thereto under article 10 of this chapter.

“Taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the tax imposed by this article is computed. In the case of a return made under this article, or regulations of the Tax Commissioner, for a fractional part of a year, the term “taxable year” means the period for which such return is made.

“Taxpayer” means any person subject to any tax imposed by this article.

“This code” means the Code of West Virginia, 1931, as amended.
“This state” means the State of West Virginia.

§11-27-10a. Imposition of tax on managed care organizations.

(a) Imposition of tax. — For the privilege of holding a certificate of authority within this state to establish or operate a “health maintenance organization” pursuant to §33-25A-4 of this code (hereinafter “certified HMO”), there is hereby levied and shall be collected from every such certified HMO an annual broad-based health-care related tax.

(b) Rate and measure of tax. — The tax imposed by this section shall be based on the following rates applied to each taxable health plan’s total Medicaid member months within tiers I, II and III, and to non-Medicaid member months within tiers IV and V:

1. Tier I — $17.00 for each Medicaid member month under 250,000;
2. Tier II — $15.00 for each Medicaid member month between 250,000 and 500,000;
3. Tier III — $7.00 for each Medicaid member month greater than 500,000;
4. Tier IV — $0.25 for each non-Medicaid member month under 150,000; and
5. Tier V — $0.10 for each non-Medicaid member month of 150,000 or more.

(c) Definitions.

1. “Managed care organization” or “MCO” means a certified HMO that provides health care services to Medicaid members pursuant to an agreement or contract with the department.

2. “Managed care plan” means an agreement or contract between the secretary and an MCO under which the
MCO agrees to provide health care services to Medicaid members.

(3) “Medicaid member” means an individual enrolled in a taxable health plan who is a Medicaid beneficiary on whose behalf the department directly pays the health plan a capitated payment.

(4) “Medicaid member months” means the number of Medicaid members in a taxable health plan in each month or part of a month over the course of the tax year.

(5) “Non-Medicaid enrollee” means an individual who is an “enrollee”, “subscriber”, or “member”, as those terms are defined in §33-25A-2(8) of this code, in a taxable health plan who is not a Medicaid member: Provided, That this definition does not include Public Employees Retirement Agency members or Medicare Advantage members.

(6) “Non-Medicaid member months” means the number of non-Medicaid enrollees in a taxable health plan in each month or part of a month over the course of the tax year, but does not include persons enrolled in either a health plan issued by the West Virginia Public Employees Insurance Agency or a plan issued pursuant to the Federal Employees Health Benefits Act of 1959 (Public Law 86-382) to the extent the imposition of the tax under this section is preempted pursuant to Section 8909(f) of Title 5 of the United States Code.

(7) “Taxable health plan” means: (i) An agreement or contract under which a certified HMO agrees to provide health care services to a non-Medicaid member in accordance with §33-25A-1 et seq. of this code and (ii) a managed care plan.

(d) Effective date. –

(i) Subject to an earlier termination pursuant to the terms of paragraph (ii), the tax imposed by this section shall be effective for three years beginning on the first day of the
state fiscal year following a 30-day period after the secretary has posted notice on the department Internet website that approval had been received from the federal Centers for Medicare and Medicaid Services that the tax imposed by this section is a permissible health care related tax in accordance with Section 433.68 of Title 42 of the Code of Federal Regulations and is therefore eligible for federal financial participation.

(ii) The tax imposed by this section shall be administered in accordance with the provisions of this article and the tax administration and procedures act in §11-10-1 et seq.: Provided, That the tax imposed by this section shall be automatically void if the Centers for Medicare and Medicaid Services determines that it is no longer a permissible health care related tax that is eligible for federal financial participation. Subject to the terms of this paragraph, the tax imposed by this section shall remain in effect only until June 30, 2022, and as of June 30, 2022, is repealed.

(e) *Time for Paying Tax.* — Notwithstanding the provisions of §11-27-25 of this code no taxes may be collected under this article until the department receives written notice that the federal Centers for Medicare and Medicaid Services has approved proposed Medicaid rates as actuarially sound for the taxable year in which the tax will be imposed.
AN ACT to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended, relating to exempting from state sales and use tax the sale and installation of mobility enhancing equipment installed in a new or used motor vehicle for the use of a person with physical disabilities and the sale and installation for the repair or replacement parts of mobility enhancing equipment; and establishing a definition for mobility enhancing equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices, all as defined in §11-15B-2 of this code, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article: Provided, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended for the period beginning on and after July 1, 2016, and continuing
until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

(b) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase of durable medical equipment, as defined in §11-15B-2 of this code, to be dispensed upon prescription by a health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax imposed by this article: Provided, That the durable medical equipment is purchased by an individual for exclusive use by the purchaser or another individual and used predominantly by the recipient individual in his or her home environment.

(1) Effective Dates. — The provisions of this subsection shall apply to purchases made on and after July 1, 2016.

(2) Per se exemption. — The exemption set forth by this subsection shall be given without the necessity of an exemption certificate, direct pay permit or refund or credit request.

(c) Notwithstanding any provision of this article, article 15A, or article 15B of this chapter, the sale and installation of mobility enhancing equipment, as defined in §11-15B-2 of this code, installed in a new or used motor vehicle for the use of a person with physical disabilities are exempt from the taxes imposed by this article. Any sale and installation for the repair or replacement parts of mobility enhancing equipment, whether the repair or replacement parts are purchased separately or in conjunction with the mobility enhancing equipment, and whether the parts continue the original function or enhance the functionality of the mobility enhancing equipment, are exempt from the taxes imposed by this article.

(d) Definitions. — The following definitions shall apply:

(1) For purposes of this section, “used predominantly by the recipient individual in his or her home environment”,
with reference to durable medical equipment, means that the
equipment is sold to an individual for use by the individual
purchaser or by another individual at home, regardless of
where the individual resides. For purposes of this definition,
the term “home” means and includes facilities such as
nursing homes, assisted care centers and school dormitories,
of which a user or purchaser is a resident. A purchase of
such equipment shall not be disqualified from the
exemption because the equipment is incidentally used on
the streets, in commercial establishments, in public places
and in locations other than the home, so long as use in the
home is the predominant use. For purposes of this
definition, the term “individual” means and is limited to a
single, separate human being and specifically excludes any
health care provider, or provider of nursing services,
personal care services, behavioral care services, residential
care or assisted living care, or any entity or organization
other than a human being.

(2) When the equipment is sold to a facility such as a
hospital, nursing home, medical clinic, dental office,
chiropractor, or optician office, then this shall not constitute
a use of the equipment by the recipient individual in his or
her home environment. The fact that a nursing home may
use the equipment only for its residents does not make the
equipment exempt for home use: Provided, That nothing in
this section shall be interpreted to void or abrogate lawful
assertion and application of the purchases for resale
exemption as it may apply to any purchaser of durable
medical equipment.

(3) For purposes of this section, “health care provider”
means any person licensed to prescribe drugs, durable
medical equipment, mobility enhancing equipment and
prosthetic devices intended for use in the diagnosis, cure,
mitigation, treatment, or prevention of injury or disease. For
purposes of this section, the term “health care provider”
includes any hospital, medical clinic, nursing home or
provider of inpatient hospital services and any provider of
outpatient hospital services, physician services, nursing services, ambulance services, surgical services, or veterinary services: Provided, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.

(4) The term “durable medical goods”, as used in this article, means “durable medical equipment” as defined in §11-15B-2 of this code.

(5) For purposes of this section, the term “nursing home or facility” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article.

(6) For purposes of this section, the term “assisted care center” means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing
Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

(7) For purposes of this section, the term “school dormitory” means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated, or controlled by an institution of higher education, and shall be synonymous with the term “residence hall”.

(8) For purposes of this section, the term “mobility enhancing equipment” means “mobility enhancing equipment” as defined in §11-15B-2 of this code.
ARTICLE 15A. USE TAX.


(a) General. — When used in this article and article fifteen of this chapter, terms defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature:

(b) Definitions. —

(1) “Affiliated person” means a person that, with respect to another person:

(A) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or

(B) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(2) “Business” means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in this state;

(3) “Consumer” means any person purchasing tangible personal property, custom software or a taxable service from a retailer as defined in §11-15A-1(b)(23), or from a seller as defined in §11-15B-2 of this code;

(4) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;
(5) “Fiat currency” means government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law;

(6) “Lease” includes rental, hire and license;

(7) “Marketplace” includes any means by which any marketplace seller sells or offers for sale tangible personal property, custom software, or services, for delivery into this state, regardless of whether the marketplace seller has a physical presence in this state;

(8) “Marketplace facilitator” means a person that contracts with one or more sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller’s products through a physical or electronic marketplace operated by the person, and engages:

(A) Directly, or indirectly, through one or more affiliated persons, in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(iv) Software development or research and development activities related to any of the activities described in §11-15A-1(b)(7)(B) of this code, if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(B) In any of the following activities with respect to the seller’s products:
(i) Payment processing services;
(ii) Fulfillment or storage services;
(iii) Listing products for sale;
(iv) Setting prices;
(v) Branding sales as those of the marketplace facilitator;
(vi) Order taking;
(vii) Advertising or promotion; or
(viii) Providing customer service or accepting or assisting with returns or exchanges.

(C) This term does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle payment transactions between two parties.

(9) “Marketplace seller” means a seller that makes retail sales through any physical or electronic marketplaces operated by a marketplace facilitator or directly resulting from a referral by a referrer, regardless of whether the seller is required to be registered with the Tax Commissioner as provided in §11-12-1 et seq. of this code.

(10) “Newspaper” means a paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features, and advertising.

(11) “Person” includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any
court or otherwise acting on behalf of others, or any other
group or combination acting as a unit, and the plural as well
as the singular number;

(12) “Platform” means an electronic or physical
medium, including, but not limited to, a website or catalog,
operated by a referrer.

(13) “Product” has the same meaning as provided in
§11-15B-15 of this code.

(14) “Purchase” means any transfer, exchange or barter,
conditional or otherwise, in any manner or by any means
whatsoever, for a consideration;

(15) “Purchase price” means the measure subject to the
tax imposed by this article and has the same meaning as
sales price;

(16) “Purchaser” means any consumer who purchases
or leases a product or service sourced to this state under §11-
15B-1 et seq. of this code.

(17) “Referral” means the transfer by a referrer of a
potential customer to a marketplace seller who advertises or
lists products for sale on the referrer’s platform.

(18) (A) “Referrer” means a person, other than a person
engaging in the business of printing a newspaper or
publishing a newspaper as defined in §11-15A-1(b)(10) of
this code, who contracts or otherwise agrees with a seller to
list or advertise for sale one or more items in any medium,
including a website or catalog; receives a commission, fee,
or other consideration from the seller for the listing or
advertisement; transfers, via telephone, internet link, or
other means, a purchaser to a seller or an affiliated person
to complete the sale; and does not collect receipts from the
purchasers for the transaction.

(B) “Referrer” does not include a person that:
(i) Provides internet advertising services; and

(ii) Does not ever provide either the marketplace seller’s shipping terms or advertise whether a marketplace seller charges sales and use taxes.

(19) “Related person” has the same meaning prescribed by section 267 or 707(b) of the Internal Revenue Code, as defined in §11-21-9 of this code.

(20) “Remote seller” means any seller, other than a marketplace facilitator or referrer, who does not have a physical presence in this state that, through a platform, sells tangible personal property or services to persons in this state, the sale or use of which is subject to the tax imposed by this article. The term does not include an employee who in the ordinary scope of employment renders services to his or her employer in exchange for wages and salaries.

(21) “Resident” means any person that resides, is located, has a place of business, or is conducting business in West Virginia;

(22) “Retail sale” and “sale” have the same meaning as provided in §11-15B-1 et seq. of this code.

(23) “Retailer” means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in this state: Provided, That when in the opinion of the Tax Commissioner it is necessary for the efficient administration of this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own
behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this article;

(24) “Retailer engaging in business in this state” or any like term, unless otherwise limited by federal statute, means and includes, but is not limited to:

(A) Any retailer having or maintaining, occupying or using, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code; or

(B) On and after January 1, 2014, any retailer that is related to, or part of a unitary business with, a person, entity or business that, without regard to whether the retailer is admitted to do business in this state pursuant to §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business, all as defined in §11-24-3a of this code;

(i) That, pursuant to an agreement with or in cooperation with the related retailer, maintains an office, distribution house, sales house, warehouse or other place of business in this state;

(ii) That performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business;
(iii) That, by any agent, or representative (by whatever name called), or employee, performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business; or

(iv) That directly, or through or by an agent, representative or employee located in, or present in, this state, solicits business in this state for or on behalf of the retailer, or any related entity, related member or part of the unitary business.

(C) For purposes of paragraph (B) of this subdivision, the term “service” means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving customer issues or complaints while in this state, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within this state, the service of operating a website or Internet-based business from a location within the state, or any other service.

(25) “Sale” means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer;

(26) “Seller” means a retailer, and includes every person selling or leasing tangible personal property or custom software or furnishing a taxable service in a transaction that is subject to the tax imposed by this article;

(27) “Solicitor” means a person that directly or indirectly solicits business for a retailer.

(28) “Streamlined sales and use tax agreement” or “agreement”, when used in this article, has the same
meaning as when used in §11-15B-1 et seq., except when
the context in which the word agreement is used clearly
indicates that a different meaning is intended by the
Legislature;

(29) “Tangible personal property” means personal
property that can be seen, weighed, measured, felt, or
touched, or that is in any manner perceptible to the senses.
“Tangible personal property” includes, but is not limited to,
electricity, water, gas, and prewritten computer software;

(30) “Tax commissioner” or “commissioner” means the
State Tax Commissioner, or his or her delegate. The term
“delegate” in the phrase “or his or her delegate”, when used
in reference to the Tax Commissioner, means any officer or
employee of the State Tax Division duly authorized by the
Tax Commissioner directly, or indirectly by one or more
redelegations of authority, to perform the functions
mentioned or described in this article or rules promulgated
for this article;

(31) “Taxpayer” includes any person within the
meaning of this section, who is subject to a tax imposed by
this article, whether acting for himself or herself or as a
fiduciary; and

(32) “Use” means and includes:

(A) The exercise by any person of any right or power
over tangible personal property or custom software incident
to the ownership, possession or enjoyment of the property,
or by any transaction in which possession of or the exercise
of any right or power over tangible personal property,
custom software or the result of a taxable service is acquired
for a consideration, including any lease, rental or
conditional sale of tangible personal property or custom
software; or

(B) The use or enjoyment in this state of the result of a
taxable service. As used in this subdivision, “enjoyment”
includes a purchaser’s right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term “use” does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the state for use thereafter solely outside this state.

(33)(A) “Virtual currency” means any type of digital unit that is used as a medium of exchange or a form of digitally stored value. “Virtual currency” shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort.

(B) “Virtual currency” shall not be construed to include any of the following:

(i) Digital units that (I) are used solely within online gaming platforms, (II) have no market or application outside of those gaming platforms, (III) cannot be converted into, or redeemed for, fiat currency or virtual currency, and (IV) may or may not be redeemable for real-world goods, services, discounts, or purchases;

(ii) Digital units that can be redeemed for goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, fiat currency or virtual currency; or

(iii) Digital units used as part of prepaid cards.

(34) “West Virginia gross revenue” means gross receipts from all sales sourced to West Virginia, as provided
in §11-15B-1 et seq. of this code, whether the sale is taxable or exempt from tax.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen-a. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.


(a) Duty to collect tax. — For purposes of §11-15A-1 et seq. of this code and for collection of use tax required under §11-15A-6 and §11-15A-6b of this code, the phrase retailer engaging in business in this state also means and includes a remote seller, marketplace facilitator, or referrer that meets the requirements of subsection (e) of this section. A marketplace facilitator or referrer is required to collect and remit the use tax on all taxable sales of tangible personal property, [custom software] or services: (i) Made by the marketplace facilitator or referrer; or (ii) facilitated for marketplace sellers, to purchasers in this state.

(b) Agency. — For purposes of §11-15A-6b of this code, a marketplace facilitator or referrer is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator’s physical or electronic marketplace or directly resulting from a referral of the purchaser by the referrer.

(c) Sales made through a solicitor in this state. — A retailer is deemed to have a solicitor in this state if the retailer enters into an agreement with a resident under which the resident, for a commission, fee, or other similar consideration, directly or indirectly refers potential customers, whether by link on an internet site, or otherwise, to the retailer. This determination may be rebutted by a showing of proof that the resident with whom the retailer
has an agreement did not engage in any solicitation in this
state on behalf of the retailer that would satisfy the nexus
requirement of the United States Constitution during the
calendar year in question.

(d) Record keeping. — In addition to other applicable
record keeping requirements, the Tax Commissioner may
require a marketplace facilitator or referrer to provide or
make available to the Tax Commissioner any information
the commissioner determines is reasonably necessary to
enforce the provisions of §11-15A-1 et seq. of this code.
Such information may include documentation of sales made
by marketplace sellers through the marketplace facilitator’s
physical or electronic marketplace or directly resulting from
a referral by the referrer. The Tax Commissioner may
prescribe by procedural rule promulgate, as provided in
§29A-3-1 et seq. of this code, the form and manner for
providing this information.

(e) Economic nexus. — A marketplace facilitator,
referrer, or remote seller shall collect the tax imposed by
§11-15A-2 of the code when:

(1) The marketplace facilitator, referrer, or remote seller
makes or facilitates West Virginia sales on its own behalf or
on behalf of one or more marketplace sellers equal to or
exceeding $100,000 in gross revenue for an immediately
preceding calendar year, or a current calendar year; or

(2) The marketplace facilitator, referrer, or remote seller
makes or facilitates West Virginia sales on its own behalf or
on behalf of one or more marketplace sellers in 200 or more
separate transactions for an immediately preceding calendar
year or a current calendar year.

(f) Effective date. — This section enacted in 2019 shall
apply to sales by a marketplace facilitator, or referrer, made
on and after July 1, 2019.
AN ACT to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating to termination and expiration of the taxes imposed upon persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone on and after July 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

*§11-13A-3. Imposition of tax on privilege of severing coal; reduction of severance rate for coal mined by underground methods based on seam thickness; termination of severance tax on healthcare services; termination of severance taxes on limestone and sandstone.

(a) Imposition of tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

*NOTE: This section was also amended by H. B. 3142, which passed subsequent to this act.
(b) Rate and measure of tax. — Subject to the provisions of §11-13A-3(g) of this code, the tax imposed in §11-13A-3(a) of this code shall be five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article. In the case of coal, this five percent rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

(c) “Certain health care services” defined. — For purposes of this section, the term “certain health care services” means, and is limited to, behavioral health services.

(d) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in §11-13A-3(a) of this code and to all persons providing certain health care services in this state as enumerated in §11-13A-3(c) of this code and shall be in addition to all other taxes imposed by law.

(e) Effective date. — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

(f) Reduction of severance tax rate. — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in §11-13A-3(a) of this code shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:
(1) For coal mined by underground methods from seams with an average thickness of 37 inches to 45 inches, the tax imposed in §11-13A-3(a) of this code shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than 37 inches, the tax imposed in §11-13A-3(a) of this code shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

(2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than 45 inches in average thickness or any existing mine that has not produced coal from seams 45 inches or less in thickness in the 180 days immediately preceding the effective date of this subsection.

(3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

(g)(1) Termination and expiration of the behavioral health severance and business privilege tax. — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) Refunds made. — The Tax Commissioner will issue a requisition on the Treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any
refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

(h) Termination and expiration of the privilege tax on limestone or sandstone. — The taxes imposed under this section for persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of the termination.

CHAPTER 254

(Com. Sub. for H. B. 2854 - By Delegate Householder)
[By Request of the State Tax Division]

[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 §11-15-9q, relating to exempting sales by not-for-profit volunteer school support organizations for the purpose of raising funds for their schools from the consumers sales and service tax and use tax; specifying time limitations for fundraisers; specifying that the exemption applies without regard to whether the organization holds, or does not hold, an exemption under §501(c)(3) or §501(c)(4) of the Internal Revenue Code.

Be it enacted by the Legislature of West Virginia:
ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9q. Exemption for sales by schools and volunteer school support groups.

Notwithstanding any other provisions of this code to the contrary, sales of tangible personal property and services by not-for-profit volunteer school support groups for elementary or secondary schools located in this state, which hold fund raisers for their schools that last no more than 14 consecutive days and are held not more than 18 times during any 12-month period, are exempt from the taxes imposed by §11-15-1 et seq. and §11-15A-1 et seq. of this code, if the sole purpose of the sales is to obtain revenue for the functions and activities of an elementary or secondary school located in this state. This exemption applies to such sales without regard to whether the volunteer school support organizations holds, or does not hold, an exemption under §501(c)(3) or §501(c)(4) of the Internal Revenue Code of 1986, as amended.

CHAPTER 255

(H. B. 3045 - By Delegates Cowles, Maynard, Barrett, Skaff, Boggs, Williams and Porterfield)

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

AN ACT to amend and reenact §7-18-2 of the Code of West Virginia, 1931, as amended, relating to exempting certain complimentary hotel rooms from hotel occupancy tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.
§7-18-2. Rate of tax.

(a) The rate of tax imposed shall be three percent of the consideration paid for the use or occupancy of a hotel room.

(b) On and after July 1, 2005, a municipality may by ordinance increase the rate of tax imposed in this section to not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided, That notwithstanding any other provision of this article to the contrary, a municipality may not impose any tax authorized by this article on a hotel located within its corporate limits upon which a county was imposing a tax authorized by this article on or after January 1, 2005, and continuously thereafter to and including the effective date of annexation of the territory in which the hotel is located pursuant to article six, chapter eight of this code and, as to that hotel, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of three percent of the consideration paid for the use or occupancy of a hotel room: Provided, however, That after June 30, 2007, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided further, That prior to any increase in the rate of tax, the county shall comply with the requirements of subsection (c) of this section: And provided further, That in the event the county commission duly enters an order of record that ceases to impose the tax authorized by this article on that hotel, then, as to that hotel, the municipality in which the hotel is located by reason of the annexation may impose the tax authorized by this article. Prior to the second reading of an ordinance proposed by a municipality to increase the rate of tax, the municipality shall conduct a properly noticed public hearing on the issue.

(c) On and after July 1, 2007, a county may by ordinance increase the rate of tax imposed in this section to not more than six percent of the consideration paid for the use or occupancy of a hotel room. At least 10 days prior to the final
vote of a county commission on an ordinance proposed by a county commission to increase the rate of tax, the county commission shall conduct a properly noticed public hearing on the issue.

(d) The consideration paid for the use or occupancy of a hotel room may not include the amount of tax imposed on the transaction under §11-15-1 et seq. of this code or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.

(e) The tax may not be imposed on complimentary hotel rooms provided without charge by a hotel operator to guests.

CHAPTER 256

(H. B. 3142 - By Delegates Householder, Criss, Rowan, Linville and Maynard)

[Passed March 9, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2019.]

AN ACT to amend and reenact §11-13A-3, §11-13A-6 and §11-13A-6a of the Code of West Virginia, 1931, as amended, all relating to severance taxes; reducing the severance tax on thermal or steam coal to incrementally over three years; providing for a total reduction of two percent of the coal severance tax at the conclusion of the three year period; providing for a reduction of thirty-five percent of the two percent reduction in the first year; providing for a reduction of sixty-five percent of the two percent reduction in the second year; providing for a full two percent reduction in the third year; providing for an elimination of the severance tax on limestone or sandstone; and establishing minimum amounts
of distribution of portion of severance taxes on coal dedicated for use and benefit of coal-producing counties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

*§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

1 (a) Imposition of tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

2 (b) Rate and measure of tax. — Subject to the provisions of subsection (h) of this section, the tax imposed in subsection (a) of this section is five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article: Provided, That effective July 1, 2019, the tax rate imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced incrementally over the next three tax years for a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent of

*NOTE: This section was also amended by H. B. 2829, which passed prior to this act.
the two percent reduction. In the case of coal, the rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code and the additional severance tax on coal imposed by the state for the benefit of coal-producing counties as provided in §11-13A-6a of this code.

(c) “Thermal or steam coal” defined. - For purposes of this section the term “thermal or steam coal” means coal sold for the purpose of generating electricity.

(d) “Certain health care services” defined. — For purposes of this section, the term “certain health care services” means, and is limited to, behavioral health services.

(e) Tax in addition to other taxes. — The tax imposed by this section applies to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (d) of this section and shall be in addition to all other taxes imposed by law.

(f) Effective date. — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

(g) Reduction of severance tax rate. — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:
(1) For coal mined by underground methods from seams with an average thickness of 37 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

(2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than 45 inches in average thickness or any existing mine that has not produced coal from seams 45 inches or less in thickness in the 180 days immediately preceding the effective date of this subsection.

(3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

(h)(1) Termination and expiration of the behavioral health severance and business privilege tax. — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection does not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) Refunds made. — The Tax Commissioner shall issue a requisition on the Treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any
refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

(i) *Termination and expiration of the privilege tax on limestone or sandstone.* — The taxes imposed under this section for persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of the termination.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of State Treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

(a) Additional coal severance tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or preparing coal (or both severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an additional severance tax, the amount of which shall be equal to the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of this article is measured as shown by the gross proceeds derived from the sale of the coal by the producer, multiplied by thirty-five one hundredths of one percent. The tax
imposed by this subsection is in addition to the tax imposed
by section three of this article, and this additional tax is
referred to in this section as the "additional tax on coal".

(b) This additional tax on coal is imposed pursuant to
the provisions of section six-a, article ten of the West
Virginia Constitution. Seventy-five percent of the net
proceeds of this additional tax on coal shall be distributed
by the State Treasurer in the manner specified in this section
to the various counties of this state in which the coal upon
which this additional tax is imposed was located at the time
it was severed from the ground. Those counties are referred
to in this section as the "coal-producing counties". The
remaining twenty-five percent of the net proceeds of this
additional tax on coal shall be distributed among all the
counties and municipalities of this state in the manner
specified in this section.

c) The additional tax on coal shall be due and payable,
reported and remitted as elsewhere provided in this article
for the tax imposed by section three of this article, and all of
the enforcement and other provisions of this article shall
apply to the additional tax. In addition to the reports and
other information required under the provisions of this
article and the tonnage reports required to be filed under the
provisions of section seventy-seven, article two, chapter
twenty-two-a of this code, the Tax Commissioner is hereby
granted plenary power and authority to promulgate
reasonable rules requiring the furnishing by producers of
such additional information as may be necessary to compute
the allocation required under the provisions of subsection (f)
of this section. The Tax Commissioner is also hereby
granted plenary power and authority to promulgate such
other reasonable rules as may be necessary to implement the
provisions of this section: Provided, That notwithstanding
any language contained in this code to the contrary, the
gross amount of additional tax on coal collected under this
article shall be paid over and distributed without the
application of any credits against the tax imposed by this
section.
(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of the additional tax on coal to the coal-producing counties, the special fund known as the "county coal revenue fund" established in the State Treasurer’s office by chapter one hundred sixty-two, acts of the Legislature, 1985 regular session, as amended and reenacted in subsequent acts of the Legislature, is hereby continued. In order to provide a procedure for the distribution of the remaining twenty-five percent of the net proceeds of the additional tax on coal to all counties and municipalities of the state, without regard to coal having been produced therein, the special fund known as the "all counties and municipalities revenue fund" established in the State Treasurer’s office by chapter one hundred sixty-two, acts of the Legislature, 1985 regular session, as amended and reenacted in subsequent acts of the Legislature, is hereby redesignated as the "all counties and municipalities coal revenue fund" and is hereby continued.

Seventy-five percent of the net proceeds of such additional tax on coal shall be deposited in the county coal revenue fund and twenty-five percent of the net proceeds shall be deposited in the all counties and municipalities coal revenue fund, from time to time, as the proceeds are received by the Tax Commissioner. The moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

(e) The moneys in the county coal revenue fund and the moneys in the all counties and municipalities coal revenue fund shall be allocated among and distributed quarterly to the counties and municipalities entitled to the moneys by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which a coal-producing
county is entitled from the county coal revenue fund shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality is entitled from the all counties and municipalities coal revenue fund shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor for the sum due to each county or municipality shall issue and a check drawn thereon making payment of such amount shall thereafter be distributed to each such county or municipality.

(f) The amount to which a coal-producing county is entitled from the county coal revenue fund shall be determined by: (1) Dividing the total amount of moneys in the fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter; and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in the county during the preceding quarter.

(g) The amount to which each county and municipality is entitled from the all counties and municipalities coal revenue fund shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the all counties and municipalities coal revenue fund by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county’s "base share".

(2) Each county’s base share shall then be subdivided into two portions. One portion is determined by multiplying
the base share by that percentage which the total population
of all unincorporated areas within the county bears to the
total population of the county, and the other portion is
determined by multiplying the base share by that percentage
which the total population of all municipalities within the
county bears to the total population of the county. The
former portion shall be paid to the county and the latter
portion is the "municipalities’ portion" of the county’s base
share. The percentage of the latter portion to which each
municipality in the county is entitled shall be determined by
multiplying the total of the latter portion by the percentage
which the population of each municipality within the county
bears to the total population of all municipalities within the
county.

(h) All counties and municipalities shall create a "coal
severance tax revenue fund" which shall be the depository
for moneys distributed to any county or municipality under
the provisions of this section, from either or both special
funds. Moneys in the coal severance tax revenue fund, in
compliance with subsection (i) of this section, may be
expended by the county commission or governing body of
the municipality for such public purposes as the county
commission or governing body shall determine to be in the
best interest of the people of its respective county or
municipality.

(i) All unexpended balances remaining in coal
severance tax revenue fund at the close of a fiscal year shall
be reappropriated to the budget of the county commission
or governing body for the subsequent fiscal year. The
reappropriation shall be entered as an amendment to the new
budget and submitted to the Tax Commissioner on or before
July 15, of the current budget year.

(j) The State Tax Commissioner shall retain for the
benefit of the state from the additional taxes on coal
collected the amount of $35,000 annually as a fee for the
administration of such additional tax by the Tax
Commissioner.
§11-13A-6a. Reallocation and dedication of percentage of severance tax for benefit of coal-producing counties; phase-in period; permissible uses of distributed revenues; duties of State Treasurer and State Tax Commissioner; audits; rulemaking.

1. (a) The purpose of this section is to provide for the reallocation and dedication of a portion of the tax attributable to the severance of coal imposed by section three of this article for the use and benefit of the various counties of this state in which the coal upon which that tax is imposed was located at the time it was severed from the ground. Those counties are referred to in this section as the coal-producing counties or, in the singular, as a coal-producing county.

2. (b)(1) Effective July 1, 2012, one percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2013, two percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2014, three percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2015, four percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2016, and thereafter, five percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated and shall be distributed for the use and benefit of the coal-producing counties as provided in this section. Effective July 1, 2019, and thereafter, the portion of the severance tax on coal imposed by §11-13A-3 of this code dedicated and to be distributed for the use and benefit of the
coal-producing counties as provided in this subsection shall not be less than the amount distributed pursuant to this subsection for the fiscal year beginning July 1, 2018.

(2) In no fiscal year may the proceeds dedicated in subdivision (1) of this subsection exceed the sum of $20 million.

(3) For purposes of this subsection, the tax attributable to the severance of coal imposed by section three of this article does not include the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

c) The amounts of the tax dedicated in subsection (b) of this section shall be deposited, from time to time, into a special fund known as the Coal County Reallocated Severance Tax Fund, which is hereby established in the State Treasury, as the proceeds are received by the State Tax Commissioner.

d) The net proceeds of the deposits made into the Coal County Reallocated Severance Tax Fund shall be allocated among and distributed quarterly to the coal-producing counties by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys that will be available for distribution to the respective counties entitled to the moneys on that distribution date. The amount to which a coal-producing county is entitled from the Coal County Reallocated Severance Tax Fund shall be determined in accordance with subsection (e) of this section. After determining as set forth in subsection (e) of this section the amount each coal-producing county is entitled to receive from the fund, a warrant of the State Auditor for the sum due to each coal-producing county shall be issued and a check drawn thereon making payment of that amount shall thereafter be distributed to each such coal-producing county
by hand, mail commercial delivery or electronic
transmission.

(e) The amount to which a coal-producing county is
entitled from the Coal County Reallocated Severance Tax
Fund shall be determined by:

(1) Dividing the total amount of moneys in the fund then
available for distribution by the total number of tons of coal
mined in this state during the preceding quarter; and

(2) Multiplying the quotient thus obtained by the
number of tons of coal removed from the ground in the
county during the preceding quarter.

(f) (1) No distribution made to a county under this
section may be deposited into the county’s general revenue
fund. The county commission of each county receiving a
distribution under this section shall establish a special
account to be known as the "(Name of County) Coal County
Reallocated Severance Tax Fund" into which all
distributions made to that county under this section shall be
deposited.

(2) Moneys in the county’s Coal County Reallocated
Severance Tax Fund shall be expended by the county
commission solely for economic development projects and
infrastructure projects.

(3) For purposes of this section:

(A) "Economic development project" means a project in
the state which is likely to foster economic growth and
development in the area in which the project is developed
for commercial, industrial, community improvement or
preservation or other proper purposes.

(B) "Infrastructure project" means a project in the state
which is likely to foster infrastructure improvements
including, but not limited to, post-mining land use, any
water or wastewater facilities or any part thereof, storm
water systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development or buildings that promote job creation and retention.

(4) A county commission may not expend any of the funds available in its Coal County Reallocated Severance Tax Fund for personal services, for the costs of issuing bonds, or for the payment of bond debt service, and shall direct the total funds available in its coal county reallocated severance tax fund to project development, which may include the costs of architectural and engineering plans, site assessments, site remediation, specifications and surveys, and any other expenses necessary or incidental to determining the feasibility or practicability of any economic development project or infrastructure project.

(5) On or before December 31, 2013, and December 1 of each year thereafter, the county commission of each county receiving a distribution of funds under this section shall deliver to the Joint Committee on Government and Finance a written report setting forth the specific projects for which those funds were expended during the next preceding fiscal year, a detailed account of those expenditures, and a showing that the expenditures were made for the purposes required by this section.

(g) An audit of any funds distributed under this section may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the county commission or county commissions audited.

(h) The State Tax Commissioner shall propose for promulgation legislative rules pursuant to article three, chapter twenty-nine-a of this code for the administration of the provisions of this section, and is authorized to promulgate emergency rules for those purposes pursuant to that article.
CHAPTER 257

(H. B. 3144 - By Delegates Hartman, Storch, Skaff, Graves, Espinosa, Rowan, Maynard, Hill, Longstreth and Barrett)

[Passed March 9, 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 §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-13EE-14, §11-13EE-15, and §11-13EE-16, all relating generally to Coal Severance Tax Rebate; findings and purpose; defining terms; providing for rebate of severance tax when capital investment made in new machinery, equipment, or improvements to real property directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; imposing recapture tax in certain circumstance; providing rules for interpretation and construction; requiring periodic rebate reports; authorizing rulemaking; and providing for severability and effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-1. Findings and purpose.

The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment
in the coal industry in this state and thereby increase economic development, there is hereby provided a coal severance tax rebate.


(a) General—When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined—

(1) “Affiliated group” means one or more chains of corporations, limited liability entities, or partnerships, or any combination thereof, connected through the ownership of stock or ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) “Business” means and is limited to the activity of producing coal for sale, profit or commercial use including coal preparation and processing.

(3) “Capital investment in new machinery, equipment, or improvements to real property” means:

(A) Tangible personal property in the form of machinery and equipment that is purchased on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the machinery or equipment commences in this state on or after the effective date of this article;

(B) Tangible personal property in the form of machinery and equipment that is leased by the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or after the effective date of this article, if the
original or first use of the machinery or equipment commences in this state, with the taxpayer, on or after the effective date of this article and the machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes;

(C) Improvements to real property having a useful life or 5 or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service for direct use in the production of coal.

(4) “Coal mine” or “mine” includes:

(A) A “surface mine,” or “surface mining operation” which means:

(i) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(ii) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and
for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities:

Provided, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not include any of the following:

(I) Coal extraction authorized pursuant to a government-financed reclamation contract;

(II) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract; and

(B) An “underground mine” which includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(5) “Coal mining operation” includes the mine and the coal preparation and processing plant.

(6) “Coal preparation and processing plant” means any facility (excluding underground mining operations) which...
prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(7) “Coal production” means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at a coal preparation and processing plant.

(8) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(9) “Controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50 percent of the voting power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or more of the corporations; and the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock of at least one of the other corporations.

(10) “Controlling interest” means:

(A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all classes of stock of the corporation;

(B) For a partnership, association, trust or other entity other than a limited liability company, more than 50 percent ownership, directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity;

(C) For a limited liability company, either more than 50 percent ownership, directly or indirectly, of the total membership interest of the limited liability company, or
more than 50 percent ownership, directly or indirectly, of
the beneficial ownership interest in the membership interest
of the limited liability company.

(11) “Corporation” means any corporation, joint-stock
company or association, and any business conducted by a
trustee or trustees wherein interest or ownership is
evidenced by a certificate of interest or ownership or similar
written instrument.

(12) “Delegate” used in the phrase “or his delegate”,
when used in reference to the Tax Commissioner, means
any officer or employee of the State Tax Department duly
authorized by the Tax Commissioner directly, or indirectly
by one or more redelegations of authority, to perform the
functions mentioned or described in this article.

(13) “Directly used or consumed in the production of
c coal” means used or consumed in those activities or
operations which constitute an integral and essential part of
the production of coal, as contrasted with and distinguished
from those activities or operations which are simply
incidental, convenient or remote to the production of coal.

(A) Uses of tangible personal property or improvements
to real property which constitute direct use or consumption
in the production of coal include only:

(i) New machinery, equipment, or improvements to real
property that are depreciable, or amortizable, and have a
useful life of five or more years for federal income tax
purposes, and that are directly used in the production of coal
in this state;

(ii) Transportation of coal within the coal mine from the
coal face or coal deposit to the exterior of the mine or to a
point where the extracted coal is transported away from the
mine;
(iii) Directly and physically recording the flow of coal during the production of coal including those coal treatment processes specified in §11-13A-4 of this code;

(iv) Safety equipment and apparatus directly used in the production of coal, or to secure the safety of mine personnel in direct use in the production of coal;

(v) Controlling or otherwise regulating atmospheric conditions required for the production of coal;

(vi) Transformers, pumps, rock dusting equipment and other property used to supply electricity or water, or to supply or apply rock dust directly used in the production of coal;

(vii) Storing, removal or transportation of economic waste, including coal gob, resulting from the production of coal;

(viii) Engaging in pollution control or environmental quality or protection activity directly relating to the production of coal; or

(ix) Otherwise using as an integral and essential part of the production of coal.

(B) Uses of tangible personal property or improvements to real property which do not constitute direct use or consumption in the production of coal include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel: Provided, That safety equipment and apparatus directly used in the production of coal or to secure the safety of mine personnel is direct use in the production of coal when the tangible personal property is depreciable, or amortizable, for federal
income tax purposes and has a useful life of five or more years for federal income tax purposes when it is placed in service or use;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration;

(vi) Measuring or determining weight, and ash content, water content and other physical and chemical characteristics of the coal after production;

(vii) An activity or function incidental or convenient to the production of coal, rather than an integral and essential part of these activities.

(14) “Eligible taxpayer” means:

(A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of producing coal for sale, profit or commercial use for at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state; or

(B) A taxpayer that has experienced a change in business composition through merger, acquisition, split-up, spin-off or other ownership changes or changes in the form of the business organization from limited liability company to C corporation, or partnership, or from one form of business organization to a different form of business organization, may constitute an eligible taxpayer if the entity currently operating in this state was operating in a different form of business organization in this state at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state. In the case of business composition change through merger, acquisition, split-up, spin-off or other ownership changes the current business
may constitute an eligible taxpayer if at least 50 percent of the business assets of such component were actively and directly used in coal production activity in this state for such two-year period. If less than 50 percent of the assets of the current entity were not actively and directly used in coal production activity in this state for such two-year period, then the current entity resulting from a business composition change through merger, acquisition, split-up, spin-off or other ownership shall not constitute an eligible taxpayer.

(15) “Includes” and “including” when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the generally understood meaning of the term defined.

(16) “Original use” means the first use to which the property is put by anyone.

(17) “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, operation or venture is carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

(18) “Person” includes any natural person, corporation, partnership, limited liability company or other business entity.

(19) “Production of coal” means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at the coal preparation and processing plant.
(20) “Property” means new machinery, equipment, or improvements to real property that are depreciable or amortizable for federal income tax purposes and that have a useful life of five or more years for federal income tax purposes.

(21) “Property purchased or leased for business expansion” means:

(A) Included property—Except as provided in subparagraph (B), the term “property purchased or leased for business expansion” means tangible personal property, or improvements to real property but only if the property was purchased, or leased and placed in service or use by the taxpayer in West Virginia. This term includes only:

(i) Tangible personal property placed in service or use by the taxpayer on or after the effective date of this article, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business, or its equity owners, under §11-21-1 et seq. or §11-24-1 et seq. of this code, and which has a useful economic life at the time the property is placed in service or use in this state, of five or more years.

(ii) Tangible personal property acquired by written lease having a primary term of 5 years or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax purposes and that has a useful life of five or more years for federal income purposes when it is placed in service or use, and when the lease commences and was executed by the parties thereto on or after the effective date of this article, if used as a component part of a new or expanded coal mining operation in this state shall be included within this definition.

(iii) Improvements to real property having a useful life of five or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the
effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service as a component part of a new or expanded coal mining operation in this state.

(B) Excluded property—The term “property purchased or leased for business expansion” shall not include:

(i) Machinery and equipment owned or leased by the taxpayer and improvements to real property owned by a taxpayer for which credit was taken or is claimed under any other article of this chapter;

(ii) Repair costs, including materials used in the repair, unless for federal income tax purposes, must be capitalized and not expensed;

(iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

(iv) Airplanes;

(v) Off-premise transportation equipment;

(vi) Machinery, equipment, or improvements to real property that are primarily used outside this state;

(vii) Machinery, equipment, or improvements to real property that are acquired incident to the purchase of the stock or assets of the seller; and

(viii) Used machinery, equipment, or improvements to real property.

(C) Purchase date—New machinery, equipment, or improvements to real property shall be deemed to have been purchased prior to a specified date only if:

(i) The machinery, equipment, or improvements to real property were owned by the taxpayer prior to the effective date of this article or were acquired by the taxpayer pursuant
to a binding purchase contract which was in effect prior to the effective date of this article; or

(ii) In the case of leased machinery and equipment, there was a binding written lease or contract to lease identifiable machinery or equipment in effect prior to the effective date of this article.

(22) “Purchase” means any acquisition of new machinery, equipment, or improvements to real property, but only if:

(A) The property or the improvement to the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the United States Internal Revenue Code, as defined in §11-24-3 of this code;

(B) The property or the improvement to the property is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the property or improvements to property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of the property or the improvements to property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014 (e) of the United States Internal Revenue Code.

(23) “Qualified coal mining activity” means any business or other activity subject to the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use including the treatment process described as mining in §11-13A-4(a)(1) of this code.
(24) “Qualified investment” means capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal in this state that is depreciable, or amortizable, for federal income tax purposes and has a useful life for federal income tax purposes of five or more years when it is placed in service or use in this state.

(25) “Rebate” means the amount of rebate allowable under §11-13EE-3 of this code.

(26) “Related person” means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association, or trust that is in control of the taxpayer;

(C) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, the term “control”, with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. “Control,” with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, or a capital or profits interest in a partnership or association, or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code, other than paragraph (3) of that section.
(27) “State portion of severance taxes paid” means the portion of severance taxes due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

(28) “Tangible personal property” means, and is limited to, new machinery and equipment that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes when it is placed in service or use in this state.

(29) “Taxpayer” means any person exercising the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use coal, which privilege is taxable under §11-13A-3 of this code.

(30) “This code” means the Code of West Virginia, 1931, as amended.

(31) “This state” means the State of West Virginia.

(32) “United States Internal Revenue Code” or “Internal Revenue Code” means the Internal Revenue Code as defined in §11-24-3 of this code.


(a) Rebate allowable—Eligible taxpayers shall be allowed a rebate for a portion of state severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit, or commercial use that is attributable to the increase in the production of coal that is attributable to and the consequence of the taxpayer’s capital investment in new machinery, equipment, or improvements to real property used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall be determined and applied as hereinafter provided in this article.

(b) Amount of rebate—The amount of rebate allowable is determined by multiplying the amount of the taxpayer’s
capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal at a coal mining operation in this state by 35 percent. The product of this computation establishes the maximum amount of rebate allowable under this article for the capital investment in new machinery, equipment, or improvements to real property.

(c) Application of rebate amount—The amount of rebate allowable is determined by applying the rebate amount determined in subsection (b) of this section against 80 percent of the state portion of the severance tax paid on the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use that is directly attributable to the increased production of coal at the mine due to taxpayer’s capital investment in new machinery, equipment, or improvements to real property at the mine or coal processing and preparation plant.

(d) The amount of severance tax attributable to the increase in coal production at a mine due to the capital investment in new machinery, equipment, or improvements to real property shall be determined by comparing (1) the state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during calendar year 2018, or if the taxpayer has produced coal for five years at the mine at which its capital investment in new machinery, equipment, or improvements to real property are placed in service or use the average of the state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during the five year period ending on December 31, 2018, whichever is less, before allowance of any tax credits, except as provided in subsection (e) of §11-13EE-3 of this code (2) with the state severance tax due on coal produced at the mine during the then current calendar year in which the rebate amount is claimed, before allowance for any tax credits. When the amount in (2) of this section is greater than the amount in (1) of this section, the difference is the amount of state severance tax due to the
increase in coal production at the mine that is attributable to the capital investment in new machinery, equipment, or improvements to real property: Provided, That when the producer of the coal operates more than one mine in this state, or is a member of a controlled or affiliated group that operates one or more coal mines in this state, no credit shall be allowed unless the total coal production from all mines operated by the taxpayer or by members of the affiliated or controlled group in this state has increased: Provided, however, That in no case shall the severance tax attributable to any mine other than the specific mine at which capital investment in new machinery, equipment, or improvements to real property is directly used in a coal mining operation has been placed in service or use be offset by this rebate.

(e) When the eligible taxpayer is a new business that has produced coal in this state for two years before making the capital investment in new machinery, equipment, or improvements to real property then, for purposes of subdivision (1) in subsection (d) of this section, the base shall be the average amount of state severance tax due under §11-13A-3 of this code on coal produced in this state during this two-year period.

(f) No rebate shall be allowed under this article when credit is claimed under any other article of this chapter for capital investment in the new machinery, equipment, or improvements to real property. No credit shall be allowed under any other article of this chapter when rebate is allowed under this article for the capital investment in new machinery, equipment, or improvements to real property.

§11-13EE-4. Information required to determine amount of rebate allowable.

(a) A taxpayer claiming rebate under this article who operates more than one coal mine in this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 et seq. of this code that shows, for each coal mine, the number of tons of coal produced and the gross
value of the coal produced at each mine during the taxable year.

(b) When a taxpayer claiming rebate under this article is a member of an affiliated or controlled group, as the case may be, that operates more than one coal mine in this state the group shall provide a schedule with its annual severance tax return filed under §11-13A-1 et seq. of this code for the taxable year that shows for each coal mine operated in this state by the affiliated or controlled group, as the case may be, the number of tons of coal produced at each mine and the gross value of the coal produced at each mine during the taxable year.


(a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim under this article for rebate of up to 80 percent of the state portion of the additional severance taxes paid under §11-13A-3 of this code that are directly attributable to the taxpayer’s capital investment in new machinery, equipment, or improvements on real property placed in service or use during that taxable year as set forth in §11-13EE-3 of this code.

(b) When the amount of rebate claimed exceeds 80 percent of the additional state severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate amount may be carried forward and rebated by the Tax Commissioner after severance taxes due in subsequent years are paid: Provided, That the carryforward period may not exceed 10 years from the date the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state.

§11-13EE-6. Suspension of payment of rebate.

(a) No rebate may be paid under this article when the taxpayer, or any member of the taxpayer’s combined or affiliated group, as the case may be, is delinquent in the payment of severance taxes imposed pursuant to §11-13A-
3 of this code and any local, state, or federal tax or fee until such time as the delinquency is cured.

(b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting an assessment in the Office of Tax Appeals or in any court of this state or of the appropriate federal agency or court, or is complying with the terms of any payment plan agreement.

(c) In the case of a taxpayer that files a combined tax return as a member of a unitary group, no rebate under this article that is earned by one member of the combined group, but not fully used by or allowed to that member, may be claimed, in whole or in part, by another member of the group.

§11-13EE-7. Burden of proof; application required; failure to make timely application.

(a) Burden of proof—The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) Application for rebate required—

(1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid under this article for any capital investment in new machinery, equipment, or improvements to real property placed in service or use until the person asserting a claim for the allowance of rebate under this article makes written application to the Tax Commissioner for allowance of rebate as provided in this section.

(2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the severance tax return, determined by including any authorized extension of time for filing the return, for the taxable year in which the machinery, equipment, or improvements to which the rebate relates is
placed in service or use and all information required by the form is provided.

(3) A separate application for rebate is required for each taxable year during which the taxpayer places new machinery, equipment, or improvements in service or use in a mine or coal preparation and processing facility in this state.

(c) Failure to make timely application. — The failure to timely apply for the rebate results in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This penalty applies annually until the application is filed.

§11-13EE-8. Identification of capital investment property.

Every taxpayer who claims a rebate pursuant to the provisions of this article shall maintain sufficient records to establish the following facts for each item of qualified investment property:

(1) Its identity;
(2) Its actual or reasonably determined cost;
(3) Its useful life for federal income tax purposes;
(4) The month and taxable year in which it was placed in service;
(5) The amount of rebate claimed; and
(6) The date it was disposed of or otherwise ceased to be qualified capital investment property.

§11-13EE-9. Failure to keep records of capital investment property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:
(1) A taxpayer is treated as having disposed of, during the taxable year, any machinery, equipment or improvements to real property that the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when capital investment in new machinery, equipment, or improvements to real property was reported for purposes of claiming this credit during the taxable year, or the machinery, equipment, or improvements to real property were placed in service or use, the taxpayer is treated as having placed it in service or use in the most recent prior taxable year in which similar machinery, equipment, or improvements to real property were placed in service or use, unless the taxpayer can establish that the machinery, equipment, or improvements to real property were placed in service or use in the most recent taxable year is still on hand. In that event, the taxpayer will be treated as having placed the returned machinery, equipment, or improvements to real property in service or use in the next most recent taxable year.

§11-13EE-10. Transfer of qualified investment property to successors.

(a) Mere change in form of business—Machinery, equipment, or improvements to real property may not be treated as disposed of under §11-13EE-9 of this code, by reason of a mere change in the form of conducting the business as long as the machinery, equipment, or improvements to real property is retained in the successor business in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the rebate amount of credit still available with respect to the machinery and equipment transferred, and the transferor business may not be required to redetermine the amount of rebate allowed in earlier years.
(b) Transfer or sale to successor—Machinery, equipment, or improvements to real property is not treated as disposed of under §11-13EE-11 of this code by reason of any transfer or sale to a successor business which continues to operate machinery, equipment, or improvements to real property at the mine in this state at which the machinery, equipment, or improvements to real property were first placed in service or use. Upon transfer or sale, the successor shall acquire the amount of rebate, if any, that remains available under this article, and the transferor business is not required to redetermine the amount of rebate allowed in earlier years.

§11-13EE-11. Recapture of rebate; recapture tax imposed.

(a) When recapture tax applies—

(1) Any person who places machinery, equipment, or improvements to real property in service or use for purposes of this credit and who fails to use the machinery, equipment, or improvements to real property for at least five years in the production of coal in this state shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when §11-13EE-10 of this code applies: Provided, That, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the machinery, equipment, or improvements to real property, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the machinery, equipment, or improvements to real property used to qualify for rebate under this article.

(b) Recapture tax imposed—The recapture tax imposed by this subsection is the amount determined as follows. If the taxpayer prematurely removes machinery, equipment, or improvements to real property placed in service when considered as a class from economic service in the taxpayer’s coal production activity in this state, the taxpayer
shall recapture the amount of rebate claimed under this article for the taxable year, and all preceding taxable years, attributable to the machinery, equipment, or improvements to real property which has been prematurely removed from service. The amount of tax due under this subsection is an amount equal to the amount of rebate that is recaptured pursuant to this subsection.

(c) Payment of recapture tax—The amount of tax recaptured under this section is due and payable on the day the person’s annual return is due for the taxable year, in which this section applies, under §11-13A-1 et seq. of this code. When the employer is a partnership, limited liability company or an S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture tax is imposed under this section.

§11-13EE-12. Interpretation and construction.

(a) No inference, implication, or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision, or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection, or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in §11-13EE-1 of this code.


(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the amount of rebate claimed pursuant to this article. The report is to include the amount of rebate claimed
against the severance tax imposed pursuant to §11-13A-2 of this code.

(b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner may require to prepare the report: Provided, That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

(c) The Tax Commissioner shall identify any issues he or she has in the administration and enforcement of this rebate and make any suggestions the Commissioner may have for improving the credit or the administration of the rebate.


The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2020. All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.


(a) If any provision of this article or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of this article or the application thereof is made invalid or inapplicable by reason of the repeal, or any other invalidation of any statute therein
addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13EE-16. Effective date.

The rebate allowed by this article is allowed for capital investment in new machinery, equipment, or improvements to real property placed in service or use in this state on or after the effective date of this article.

CHAPTER 258

(Com. Sub. for S. B. 90 - By Senator Rucker)

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

AN ACT to amend and reenact §17B-3-3c of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-3 and §17C-5A-3a of said code, all relating to the Safety and Treatment Program; transferring the program from the Department of Health and Human Resources to the Division of Motor Vehicles; waiving license reinstatement fees in some circumstances; and providing for a method to reduce the license revocation period.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSE.
ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

§17B-3-3c. Suspending license for failure to pay fines or penalties imposed as the result of criminal conviction or for failure to appear in court.

(a) The Division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a circuit court, magistrate court, or municipal court of this state, pursuant to §50-3-2b, §8-10-2b, or §62-4-17 of this code, that the person has defaulted on the payment of costs, fines, forfeitures, penalties, or restitution imposed on the person by the circuit court, magistrate court, or municipal court upon conviction for any criminal offense by the date the court had required the person to pay the same, or that the person has failed to appear in court when charged with an offense. For the purposes of this section, §50-3-2b, §8-10-2b, and §62-4-17 of this code, “criminal offense” shall be defined as any violation of the provisions of this code, or the violation of any municipal ordinance, for which the violation of the offense may result in a fine, confinement in jail, or imprisonment in a correctional facility of this state: Provided, That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a criminal offense for the purposes of this section, §8-10-2b, §50-3-2b, or §62-4-17 of this code.

(b) A copy of the order of suspension shall be forwarded to the person by certified mail, return receipt requested. No order of suspension becomes effective until 10 days after receipt of a copy of the order. The order of suspension shall advise the person that because of the receipt of notice of the failure to pay costs, fines, forfeitures, or penalties, or the failure to appear, a presumption exists that the person named in the order of suspension is the same person named in the notice. The commissioner may grant an administrative hearing which substantially complies with
the requirements of the provisions §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner’s order resulting from the hearing.

(c) A suspension under this section and section three-a of this chapter will continue until the person provides proof of compliance from the municipal, magistrate, or circuit court and pays the reinstatement fee as provided in §17B-3-9 of this code. The reinstatement fee is assessed upon issuance of the order of suspension regardless of the effective date of suspension.

(d) Upon notice from an appropriate state official that the person is successfully participating in an approved treatment and job program as prescribed in §61-11-26a of this code and that the person is believed to be safe to drive, the Division of Motor Vehicles shall stay or supersede the imposition of any suspension under this section or §17B-3-3a of this code. The Division of Motor Vehicles shall waive the reinstatement fee established by the provisions §17B-3-9 upon receipt of proper documentation of the person’s successful completion of a program under §61-11-26a of this code and proof of compliance from the municipal, magistrate, or circuit court. The stay or supersedeas shall be removed by the Division of Motor Vehicles upon receipt of notice from an appropriate state official of a participant’s failure to complete or comply with the approved treatment and job program as established under §61-11-26a of this code.
CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES, OR DRUGS.

§17C-5A-3. Safety and Treatment Program; reissuance of license.

(a) The Division of Motor Vehicles shall administer a comprehensive Safety and Treatment Program for persons whose licenses have been revoked under the provisions of this article, or §17C-5-7 or §17B-3-5(6) of this code and shall also establish the minimum qualifications for mental health facilities, day report centers, community corrections centers, or other public agencies or private entities conducting the Safety and Treatment Program: Provided, That the Division of Motor Vehicles may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the Safety and Treatment Program established pursuant to this section.

(b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving or other safety driving instruction, and other programs designed to properly educate, train, and rehabilitate the offender: Provided, That successful compliance with the substance abuse and counseling program prescribed in §61-11-26a of this code is sufficient to meet the requirements of this section.

(c) The Division of Motor Vehicles shall provide for the preparation of an educational and treatment the program for each person whose license has been revoked under the
provisions of this article, or §17C-5-7 or §17B-3-5(6) of this code which shall contain the following: (1) A listing and evaluation of the offender’s prior traffic record; (2) the characteristics and history of alcohol or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

(d) There is hereby created a special revenue account within the State Treasury known as the Division of Motor Vehicles Safety and Treatment Fund. The account shall be administered by the Commissioner of the Division of Motor Vehicles for the purpose of administering the comprehensive Safety and Treatment Program established by subsection (a) of this section. The account may be invested and all earnings and interest accruing shall be retained in the account. The Auditor shall conduct an audit of the fund at least every three fiscal years.

Effective July 1, 2019, all moneys held in the Department of Health and Human Resources Safety and Treatment Fund shall be transferred to the Division of Motor Vehicles Safety and Treatment Fund.

(e) (1) The program provider shall collect the established fee from each participant upon enrollment unless the division has determined that the participant is an indigent based upon criteria established pursuant to legislative rule authorized in this section.

(2) If the division determined that a participant is an indigent based upon criteria established pursuant to the legislative rule authorized by this section, the department shall provide the applicant with proof of its determination regarding indigency, which proof the applicant shall present to the interlock provider as part of the application process.
provided in §17C-5A-3a of this code and/or the rules promulgated pursuant thereto.

(3) Program providers shall remit to the Division of Motor Vehicles a portion of the fee collected, which shall be deposited by the Commissioner of the Division of Motor Vehicles into the Division of Motor Vehicles Safety and Treatment Fund. The Division of Motor Vehicles shall reimburse enrollment fees to program providers for each eligible indigent offender.

(f) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(1) The total number of offenders participating in the Safety and Treatment Program during the prior year;

(2) The total number of indigent offenders participating in the Safety and Treatment Program during the prior year;

(3) The total number of program providers during the prior year; and

(4) The total amount of reimbursements paid to program providers during the prior year.

(g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article, or §17C-5-7 or §17B-3-5(6) of this code which shall include successful completion of the educational, treatment, or rehabilitation program, subject to the following:

(1) When the period of revocation is six months, the license to operate a motor vehicle in this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has
successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

(2) When the period of revocation is for a period of one year or for more than a year, the license to operate a motor vehicle in this state may not be reissued until: (A) At least one half of the time period has elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a revocation hearing have been paid. Notwithstanding any provision in this code, a person whose license is revoked for refusing to take a chemical test as required by §17C-5-7 of this code for a first offense is not eligible to reduce the revocation period by completing the Safety and Treatment Program.

(3) When the period of revocation is for life, the license to operate a motor vehicle in this state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

(4) Notwithstanding any provision of this code or any rule, any mental health facilities or other public agencies or private entities conducting the Safety and Treatment Program when certifying that a person has successfully completed a Safety and Treatment Program shall only have to certify that the person has successfully completed the program.

(h) (1) The Division of Motor Vehicles shall provide for the preparation of an educational program for each person whose license has been suspended for 60 days pursuant to
the provisions of §17C-5A-2(n) of this code. The educational program shall consist of not less than 12 nor more than 18 hours of actual classroom time.

(2) When a 60-day period of suspension has been ordered, the license to operate a motor vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial suspension, during which time the suspension was in effect; (B) the offender has successfully completed the educational program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

(i) A required component of the treatment program provided in §17C-5A-3(b) of this code and the education program provided for in §17C-5A-3(c) of this code shall be participation by the violator with a victim impact panel program providing a forum for victims of alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of alcohol and drug-related offenses in their lives. The Division of Motor Vehicles shall propose and implement a plan for victim impact panels where appropriate numbers of victims are available and willing to participate and shall establish guidelines for other innovative programs which may be substituted where the victims are not available to assist persons whose licenses have been suspended or revoked for alcohol and drug-related offenses to gain a full understanding of the severity of their offenses in terms of the impact of the offenses on victims and offenders. The plan shall require, at a minimum, discussion and consideration of the following:

(1) Economic losses suffered by victims or offenders;
(2) Death or physical injuries suffered by victims or offenders;
(3) Psychological injuries suffered by victims or offenders;
(4) Changes in the personal welfare or familial relationships of victims or offenders; and

(5) Other information relating to the impact of alcohol and drug-related offenses upon victims or offenders.

The Division of Motor Vehicles shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

(j)(1) The Commissioner of the Division of Motor Vehicles shall promulgate a rule for legislative approval in accordance with §29A-3-1 et seq. of this code to administer the provisions of this section and establish a fee to be collected from each offender enrolled in the Safety and Treatment Program. The rule shall include: (A) A reimbursement mechanism to program providers of required fees for the safety and treatment program for indigent offenders, criteria for determining eligibility of indigent offenders, and any necessary application forms; and (B) program standards that encompass provider criteria including minimum professional training requirements for providers, curriculum approval, minimum course length requirements, and other items that may be necessary to properly implement the provisions of this section.

(2) The Legislature finds that an emergency exists and, therefore, the commissioner shall file by July 1, 2019, an emergency rule to implement this section pursuant to the provisions of §29A-3-15 of this code.

(k) Nothing in this section may be construed to prohibit day report or community corrections programs, authorized pursuant to §62-11C-1 et seq. of this code, from administering a comprehensive Safety and Treatment Program pursuant to this section.
§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

(a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of §17C-5-1 et seq. of this code or have been convicted under §17C-5-2 of this code, or who are serving a term of a conditional probation pursuant to §17C-5-2b of this code.

(2) The program shall include the establishment of a user’s fee for persons participating in the program which shall be paid in advance and deposited into the Driver’s Rehabilitation Fund: Provided, That on and after July 1, 2007, any unexpended balance remaining in the Driver’s Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of §17A-2-21 of this code and all further fees collected shall be deposited in that fund.

(3) (A) Except where specified otherwise, the use of the term “program” in this section refers to the Motor Vehicle Alcohol Test and Lock Program.

(B) The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation in accordance with the provisions of §29A-1-1 of this code for the purpose of implementing the provisions of this section. The rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner’s approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system.

(C) Nothing in this section may be construed to prohibit day report or community corrections programs authorized pursuant to §62-11C-1 et seq., or a home incarceration program authorized pursuant to §62-11B-1 et seq. of this
code, from being a provider of motor vehicle alcohol test and lock systems for eligible participants as authorized by this section.

(4) For purposes of this section, a “motor vehicle alcohol test and lock system” means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system’s assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, the person is determined to be under the influence of alcohol.

(5) The fee for installation and removal of ignition interlock devices shall be waived for persons determined to be indigent by the Division of Motor Vehicles pursuant to §17C-5A-3 of this code. The commissioner shall establish by legislative rule, proposed pursuant to §29A-3-1 et seq. of this code, procedures to be followed with regard to persons determined by the Division of Motor Vehicles to be indigent. The rule shall include, but is not limited to, promulgation of application forms, establishment of procedures for the review of applications, and the establishment of a mechanism for the payment of installations for eligible offenders.

(6) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(A) The total number of offenders participating in the program during the prior year;

(B) The total number of indigent offenders participating in the program during the prior year;

(C) The terms of any contracts with the providers of ignition interlock devices; and

(D) The total cost of the program to the state during the prior year.
(b) (1) Any person whose license is revoked for the first time pursuant to this article or the provisions of §17C-5-1 et seq. of this code is eligible to participate in the program when the person’s minimum revocation period as specified by §17C-5A-3a(c) of this code has expired and the person is enrolled in or has successfully completed the Safety and Treatment Program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a Safety and Treatment Program: Provided, That anyone whose license is revoked for the first time for driving with a blood alcohol concentration of 0.15 percent or more, by weight, must participate in the program when the person’s minimum revocation period as specified by §17C-5A-3a(c) of this code has expired and the person is enrolled in or has successfully completed the Safety and Treatment Program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a Safety and Treatment Program.

(2) Any person whose license has been suspended for driving a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood 0.02 percent or more, by weight, but less than 0.08 percent, by weight, is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: Provided, That in the case of a person under the age of 18, the person is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person’s 18th birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and complete the educational program provided in §17C-5A-
3(d) of this code at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person shall pay all costs of the educational program, any administrative costs, and all costs assessed for any suspension hearing.

(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under §17C-5A-3a(b)(1) of this code is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less 0.15 percent, by weight, the minimum period of revocation for participation in the test and lock program is 15 days and the minimum period for the use of the ignition interlock device is 125 days;

(2) For a person whose license has been revoked for a first offense for refusing a secondary chemical test, the minimum period of revocation for participation in the test and lock program is 45 days and the minimum period for the use of the ignition interlock device is one year;

(3) For a person whose license has been revoked for a first offense for driving with a blood alcohol concentration of 0.15 percent or more, by weight, the minimum period of revocation for participation in the test and lock program is
45 days and the minimum period for the use of the ignition interlock device is 270 days;

(4) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, or did drive a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood of 0.02 percent or more, by weight, but less than 0.08 percent, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law, which act or failure proximately causes the death of any person within one year next following the act or failure, and commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, the minimum period of revocation before the person is eligible for participation in the test and lock program is 12 months and the minimum period for the use of the ignition interlock device is two years;

(5) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act
forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is one year;

(7) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their 16th birthday, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is 10 months.

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under §17C-5-2 of this code or the person’s license is revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either convicted or his or her license was revoked under any provision cited in this subsection within the past 10 years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation for driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months and the minimum period of participation is one year. The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle.
The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division shall add an additional two years to the minimum period for the use of the ignition interlock device if a person other than the driver is injured and the injuries result in that person’s death. The division shall add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past 10 years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol Test and Lock Program prior to the effective date of the revocation, the commissioner shall defer the revocation period of such person under the provisions of this section. Such deferral shall continue throughout the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period. If a person successfully completes all terms of the Motor Vehicle Alcohol Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device pursuant to §17C-5A-3a(c) of this code, plus any applicable minimum revocation period, the commissioner shall waive the revocation period.

(2) The application and acceptance of a person into the Motor Vehicle Alcohol Test and Lock Program pursuant to §17C-5A-3(e)(1) of this code constitutes an automatic waiver of their right to an administrative hearing. The Office of Administrative Hearings may not conduct a hearing on a matter which is the basis for a person actively participating in the Motor Vehicle Alcohol Test and Lock Program.

(f) Notwithstanding any other provision in this code, a person whose license is revoked for driving under the influence of drugs is not eligible to participate in the Motor
Provided, That the Division of Motor Vehicles may reduce any revocation period required of a person with a second or subsequent offense for driving under the influence of drugs to a minimum of one year and thereafter issue a restricted license on the conditions that the person is in the treatment and job program prescribed in §61-11-26a of this code, has satisfactorily performed in the treatment component of the program and that the person submits to two years of monthly drug testing. If the person is otherwise required to participate in the Alcohol Test and Lock Program for another offense, he or she may do so while meeting the conditions described in this subsection. If the person fails to submit to a drug test or submits to a test that reveals the presence of controlled substances or drugs, then the full revocation period is reinstated, and the person is only credited with revocation time actually served prior to receiving restricted privileges. The Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate emergency rules to implement the provisions of this article.

(g) An applicant for the test and lock program may not have been convicted of any violation of §17B-4-3 of this code for driving while the applicant’s driver’s license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program unless such is necessary for employment purposes.

(h) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver’s license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(i) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and
conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider. If the commissioner finds that any person participating in the program pursuant to §17C-5-2b of this code must be removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the person, the court that imposed the term of participation in the program and the prosecuting attorney in the county wherein the order imposing participation in the program was entered.

(j) A person whose license has been suspended for a first offense of driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, who has completed the educational program and who has not violated the terms required by the commissioner of the person’s participation in the program is entitled to the reinstatement of his or her driver’s license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results, and all other records pertaining to the suspension shall be expunged by operation of law: Provided, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.
(k) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during that person’s participation in the Motor Vehicle Alcohol Test and Lock Program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one month nor more than six months and fined not less than $100 nor more than $500. Any person who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months and fined not less than $100 nor more than $1,000: Provided, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site if the operation is a condition of his or her employment. For the purpose of this section, “job site” does not include any street or highway open to the use of the public for purposes of vehicular traffic.

CHAPTER 259

(Com. Sub. for S. B. 238 - By Senators Baldwin, Cline, Jeffries and Lindsay)

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

AN ACT to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating to increasing certain penalties for illegally passing a stopped school bus; increasing driver’s license suspension periods for violators; and requiring forward and rear-facing exterior cameras on all county school buses purchased after July 1, 2019.

Be it enacted by the Legislature of West Virginia:
PREAMBLE: This act shall be known as the Haven McCarthy Memorial Act.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.

(a) The driver of a vehicle, upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights, as referred to in §17C-12-8 of this code, and the driver may not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road, or driveway: Provided, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(b) Any driver acting in violation of subsection (a) of this section is guilty of a misdemeanor and, upon conviction for a first offense, shall be fined not less than $500 or more than $1,000, or confined in jail not more than six months, or both fined and confined. Upon conviction of a second violation of subsection (a) of this section, the driver shall be fined not less than $1,000 nor more than $1,500, or confined in jail not more than six months, or both fined and confined. Upon conviction of a third or subsequent violation of subsection (a) of this section, the driver shall be fined $2,000 and confined not less than 48 hours in jail but not more than six months.
(c) Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is unknown but the license plate number of the motor vehicle is known, it may be inferred that the operator was an owner or lessee of the motor vehicle for purposes of the probable cause determination. Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration: Provided, That a person charged with a violation of subsection (a) of this section, under the provisions of this subsection, where the sole evidence against the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall only be subject to the applicable fine set forth in subsection (b) of this section upon conviction: Provided, however, That the offenses set forth in subsections (f) and (g) of this section are separate and distinct from that set forth in subsection (a) of this section.

(d) Service of process of a complaint issued pursuant to subsection (c) of this section shall be effected consistent with West Virginia Rule of Criminal Procedure 4.

(e) In addition to the penalties prescribed in subsection (b) of this section, the Commissioner of Motor Vehicles shall, upon conviction, suspend the driver’s license of the person so convicted:

(1) Of a first offense under subsection (b) of this section, for a period of 60 days;

(2) Of a second offense under subsection (b) of this section, for a period of 180 days; or

(3) Of a third or subsequent offense under subsection (b) of this section, for a period of one year.

(f) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section and the violation causes serious bodily injury to any person other than the
driver, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than three years and fined not less than $2,000 nor more than $5,000.

(g) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section, and the violation causes death, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than 10 years and fined not less than $5,000 nor more than $10,000.

(h) Every bus used for the transportation of school children shall bear upon the front and rear of the bus a plainly visible sign containing the words “school bus” in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings on the contract school bus indicating “school bus” shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children: Provided, That every county board of education shall install forward-facing and rear-facing cameras on all school buses purchased on or after July 1, 2019, for the purpose of enforcing this section and for any other lawful purpose.

(i) To the extent that state, federal, or other funds are available, the State Police shall conduct an information campaign to educate drivers concerning the provisions of this section and the importance of school bus safety.

(j) The State Board of Education shall promulgate a rule in accordance with the provisions of §29A-3B-1 et seq. of this code governing the idling of school buses.
AN ACT to amend and reenact §17C-6-8 of the Code of West Virginia, 1931, as amended, relating to correcting terminology referring to racing vehicles illegally on the street.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-8. Racing on streets and highways prohibited; legislative findings; penalties; mandatory revocation of licenses.

1 The Legislature hereby determines and finds that the racing of motor vehicles on the public streets and highways of this state, whether within or in excess of the lawful speed limit (much of which racing is commonly referred to as “illegal street racing”), is extremely dangerous to life, limb, and property, and that such racing is an ever increasing problem. It is, therefore, hereby declared to be the public policy of this state to prohibit all forms of such racing on the public streets and highways, and to provide criminal penalties for, and require the revocation of, the operator’s or chauffeur’s license or nonresident privilege to drive, of those persons who are convicted of engaging in or aiding or abetting such racing.

(a) It is unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public
street or highway in this state. For the purposes of this subdivision, “speed race” means:

(1) The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or

(2) The operation of a motor vehicle in speed acceleration competition against time; or

(3) The operation of a motor vehicle in speed competition with another motor vehicle, or motor vehicles where speed exceeds the lawful speed limit.

(b) Any person who violates the provisions of subdivision (a) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not less than $50 nor more than $100; and for a second offense by a fine of not less than $50 nor more than $500, or by imprisonment for not less than six days nor more than 60 days, or by both such fine and imprisonment; and for a third and each subsequent offense by a fine of not less than $100 nor more than $1000, or by imprisonment for not less than 60 days nor more than four months, or by both such fine and imprisonment. For the purposes of this section, a forfeiture of bail or collateral deposited to secure such person’s appearance in court, which forfeiture has not been vacated, shall be equivalent to a final conviction. If at the time of any violation of the provisions of subdivision (a) of this section by any person as an operator of a motor vehicle, such person was not entitled to operate a motor vehicle in this state because his or her operator’s or chauffeur’s license, or privilege to drive in this state if such person be a nonresident, had earlier been suspended or revoked, then in addition to the offense, penalties, and mandatory revocation provided for in this section, the provisions of §17B-4-3 of this code shall be applicable.
(c) Whenever a person is convicted for a violation of the provisions of subdivision (a) of this section, which conviction has become final, the Commissioner of the Division of Motor Vehicles shall in addition to the penalties hereinbefore provided, forthwith:

1. For a first offense, revoke the operator’s or chauffeur’s license of such person, or such person’s privilege to drive in this state if he or she be a nonresident, for a period of six months;

2. For a second offense occurring within a two-year period, revoke the operator’s or chauffeur’s license of such person, or such person’s privilege to drive in this state if he or she be a nonresident, for a period of two years; or

3. For a third or any subsequent offense occurring within a five-year period, revoke the operator’s or chauffeur’s license of such person, or such person’s privilege to drive in this state if he or she be a nonresident, for a period of five years.

Whenever a person is convicted as aforesaid for a second, third, or subsequent offense which occurred while such person’s operator’s or chauffeur’s license, or privilege to drive in this state if he or she be a nonresident, was revoked pursuant to the provisions of this subdivision, the period or periods of mandatory revocation for such second, third, or subsequent offense shall be cumulative and shall run consecutively. If a person’s junior or probationary operator’s license is revoked in accordance with the provisions of this subdivision, such person may not apply for a regular operator’s or chauffeur’s license until he or she reaches 18 years of age or until the period of revocation has elapsed, whichever event shall last occur. Notwithstanding the provisions of §17B-3-8 of this code, any person whose operator’s or chauffeur’s license, or privilege to drive in this state if he or she be a nonresident, is revoked, under the provisions of this subdivision, may, following the period or periods of revocation, immediately apply for and obtain a
new operator’s or chauffeur’s license or nonresident
privilege to drive, as the case may be, if and only if the
Commissioner of the Division of Motor Vehicles is
satisfied, after investigation of the character, habits, and
driving ability of such person, that it will be safe to permit
such person to drive a motor vehicle on the public streets
and highways. Any period of revocation imposed under the
provisions of this subdivision shall be computed from the
date of such revocation.

CHAPTER 261

(H. B. 2036 - By Delegates Cooper, Pack and Rowan)

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

AN ACT to amend and reenact §17C-13-6 of the Code of West
Virginia, 1931, as amended, relating to permitting vehicles
displaying disabled veterans special registration plates to park
in places where persons with mobility impairments may park.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for
persons with a mobility impairment; disabled veterans;
definitions; qualification; special registration plates and
removable windshield placards; expiration; application;
violation; penalties.

(a) (1) The commissioner may issue up to two special
registration plates or removable windshield placards to a
person with a mobility impairment or a West Virginia
organization which transports persons with disabilities and
facilitates the mobility of its customers, patients, students or persons otherwise placed under its responsibility.

(2) Special registration plates or placards may only be issued for placement on a Class A or Class G motor vehicle registered under the provisions of §17A-3-1 et seq. of this code.

(3) The applicant shall specify whether he or she is applying for a special registration plate, a removable windshield placard or both on the application form prescribed and furnished by the commissioner.

(4) The applicant shall submit, with the application, a certificate issued by any physician, chiropractor, advanced nurse practitioner or physician’s assistant who is licensed in this state, stating that the applicant has a mobility impairment or that the applicant is an organization which regularly transports a person with a mobility impairment as defined in this section. The physician, chiropractor, advanced nurse practitioner or physician’s assistant shall specify in the certificate whether the disability is temporary or permanent. A disability which is temporary shall not exceed six months. A disability which is permanent is one which is one to five years or more in expected duration.

(5) Upon receipt of the completed application, the physician’s certificate and the regular registration fee for the applicant’s vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee) or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant’s original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the
vehicle when parked in a designated accessible parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(6) Organization which transport people with disabilities will be provided with a placard which will permit them to park in a designate area for the length of time necessary to load and unload passengers. These vehicles must be moved to a nondesignated space once the loading or unloading process is complete.

(b) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person or applicant with a “mobility impairment” means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath, chiropractor, advanced nurse practitioner or physician’s assistant licensed to practice in West Virginia:

(A) Cannot walk two hundred feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;

(C) Is restricted by lung disease to such an extent that the person’s force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person’s functional limitations are classified in severity as
Class III or Class IV according to standards established by the American Heart Association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological or other orthopedic condition;

(2) “Special registration plate” means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

(3) “Removable windshield placard” (permanent or temporary) means a two-sided, hanger-style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height; and

(D) The seal or other identifying symbol of the issuing authority;

(4) “Regular registration fee” means the standard registration fee for a vehicle of the same class as the applicant’s vehicle;

(5) “Public entity” means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government;
(6) “Public facility” means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located;

(7) “Place or places of public accommodation” means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels and other places of lodging;

(B) Restaurants, bars or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

(G) Terminals, depots or other stations used for public transportation;

(H) Museums, libraries, galleries or other places of public display or collection;

(I) Parks, zoos, amusement parks or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of
learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation;

(8) “Commercial facility” means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity;

(9) “Accessible parking” formerly known as “handicapped parking” is the present phrase consistent with language within the Americans with Disabilities Act (ADA).

(10) “Parking enforcement personnel” includes any law-enforcement officer as defined by §30-29-1 of this code, and private security guards, parking personnel and other personnel authorized by a city, county or the state to issue parking citations.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard under this section is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500. Any person who fabricates, uses or sells unofficially issued windshield placards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500 per placard fabricated, used or sold. Any person who fabricates, uses or sells unofficially issued identification cards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other
penalty he or she may otherwise incur, shall be fined $700 per identification card fabricated, used or sold. Any person who fabricates, uses or sells unofficially issued labels imprinted with a future expiration date to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $700. Any person covered by this section who sells or gives away their officially issued windshield placard to any person or organization not qualified to apply or receive the placard and then reapplies for a new placard on the basis it was stolen is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she, or they may otherwise incur, shall lose their right to receive or use a special placard or special license plate for a period of not less than five years.

(c) The commissioner shall set the expiration date for special registration plates and permanent removable windshield placards on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, chiropractor, advanced nurse practitioner or physician’s assistant, the commissioner shall issue: (i) A new special registration plate or new permanent removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard.

(d) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner.

(e) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant’s name,
assigned identification number and expiration date. The applicant shall thereafter carry this identification card on his or her person whenever parking in an accessible parking space. The identification card shall be identical in design for both registration plates and removable windshield placards.

(f) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every 12 or 24 inches apart along with the words “no parking” in painted letters which are at least 12 inches in height. All accessible parking spaces must have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(g) A vehicle displaying a disabled veterans special registration plate issued pursuant to §17A-3-14(c)(6) of this code shall be recognized and accepted as meeting the requirements of this section.

(h) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(i) Stopping, standing or parking places marked with the international symbol of access shall be designated in close
proximity to all public entities, including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

(j) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is guilty of a misdemeanor and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500.

(k) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for accessible parking with
signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as “van accessible” but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined $200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500.

(l) All signs that designate areas as “accessible parking” or that display the international symbol of access shall also include the words “Up to $500 fine”.

(m) No person may stop, stand or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined $200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500.

(n) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle’s license plate, since the driver normally will not be present.
(o) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers’ compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle’s license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated accessible parking areas by the supervising law-enforcement agency.

(p) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (o) of this section, if adopted by local authorities, or otherwise shall go into the local authorities’ General Revenue Fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.

(q) The commissioner shall prepare and issue a document to applicants describing the privileges accorded a vehicle having a special registration plate and removable windshield placard as well as the penalties when the vehicle is being inappropriately used as described in this section and shall include the document along with the issued special registration plate or windshield placard. In addition, the commissioner shall issue a separate document informing the
general public regarding the new provisions and increased fines being imposed either by way of newspaper announcements or other appropriate means across the state.

(r) The commissioner shall adopt and promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code.

CHAPTER 262

(Com. Sub. for H. B. 2183 - By Delegates Shott, Steele, Harshbarger and Wilson)

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

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to driving a vehicle under the influence of alcohol, controlled substances, drugs, or a combination thereof; and clarifying that certain misdemeanor offenses of driving under the influence do not encompass or include operating a vehicle solely and exclusively on one’s own property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Definitions-

2 (1) “Impaired state” means a person:

3 (A) Is under the influence of alcohol;

4 (B) Is under the influence of any controlled substance;
(C) Is under the influence of any other drug or inhalant substance;

(D) Is 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 eight hundredths of one percent or more, by weight.

(2) “Bodily Injury” means injury that causes substantial physical pain, illness or any impairment of physical condition.

(3) “Serious Bodily Injury” means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(b) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes the death of any person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years and shall be fined not less than $1,000 nor more than $3,000: Provided, That any death charged under this subsection must occur within one year of the offense.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes serious bodily injury to any person other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and shall be fined not less than $1,000 nor more than $3,000.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon
(e) Any person who drives a vehicle in this state: (i) While he or she is in an impaired state or (ii) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than $100 nor more than $500: Provided, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than $200 nor more than $1,000. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who, being a habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than $100 nor more than $500. A
person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(h) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than $100 nor more than $500.

(i) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than $100 nor more than $500.

(j) Any person under the age of 21 years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $100. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for 24 hours and shall be fined not less than $100 nor more than $500. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person’s record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a
continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(k) Any person who drives a vehicle in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than $200 nor more than $1,000: Provided, That such jail term shall include actual confinement of not less than 48 hours: Provided, however, That a person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(l) A person violating any provision of subsection (d), (e), (f), (g), (h), or (j) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year and the court may, in its discretion, impose a fine of not less than $1,000 nor more than $3,000.

(m) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section, for the third 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 not less than two nor more than five years and the court may, in its discretion, impose a fine of not less than $3,000 nor more than $5,000.

(n) For purposes of subsections (l) and (m) of this section relating to second, third and subsequent offenses,
the following events shall be regarded as offenses under this section:

(1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g) or (h) of this section or under a prior enactment of this section for an offense which occurred within the 10-year period immediately preceding the date of arrest in the current proceeding:

(2) Any conviction under a municipal ordinance of this state or any other state or 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 (b), (c), (d), (e), (f), (g), (h) or (i) of this section, which offense occurred within the 10-year period immediately preceding the date of arrest in the current proceeding; and

(3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for violation of subsection (e) of this section, which violation occurred within the 10-year period immediately preceding the date of arrest in the current proceeding.

(o) 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 period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that 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, or the person has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this article.
(p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f) or (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section.

(q) For purposes of this section, the term “controlled substance” has the meaning ascribed to it in §60A-1-101 et seq. of this code.

(r) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: Provided, That the court may apply the provisions of §62-11A-1 et seq. of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: Provided, however, That the court may impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 et seq. of this code may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: Provided further, That for any period of home incarceration ordered for a person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of §62-11B-5 of this code: And provided further, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than 10 days of the total period of home confinement ordered and the offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.
(s) As used in subsections (e), (f), (g), (h), (i), and (j) of this section, the words “drives a vehicle in this state” do not mean or include driving or operating a vehicle solely and exclusively on one’s own property.

CHAPTER 263

(H. B. 2926 - By Delegates Rowe, Longstreth, Robinson, Estep-Burton, Pyles, Queen, Westfall, Bates, McGeehan, Evans and Miller)

[Passed March 8, 2019; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2019.]

AN ACT to amend and reenact §9A-2-1 of the Code of West Virginia, 1931, as amended, relating to requiring the Secretary of the Department of Veterans’ Affairs to study the housing needs of veterans; and requiring a report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE HOMES FOR VETERANS.


(a) In consultation with the Governor and other appropriate state agencies, the Division Of Veterans’ Affairs shall establish and maintain a home for qualified veterans. The home in Barboursville shall be designated as the sole veterans home of its type in the state. As used in this article the term “qualified veteran” means a veteran as determined by the Division of Veterans’ Affairs, who meets the requirements under federal regulations and laws.

(b) Any individual enlisting for the first time on or after September 8, 1980, who fails to complete at least 24 months of his or her enlistment is not eligible for any right, privilege or benefit for which eligibility is based on active duty in the
Armed Forces. This provision does not apply when a person: (1) Is discharged because of hardship; (2) is retired or separated because of disability; or (3) is later determined to have a service connected disability incurred during a completed period of enlistment.

(c) In the event that a residential vacancy exists at any veterans home or facility created and established pursuant to this article, a veteran who has been a resident of the State of West Virginia for one year or more prior to filing for admission shall be given preference in filling such residential vacancy over nonresident veterans.

(d)(1) The secretary shall study: (1) The need for additional veterans homes; (2) general housing needs for veterans; (3) and other veteran needs relating to housing.

(2) On or before November 1, 2019, the secretary shall submit its study to the Joint Committee on Health and the Joint Committee on Government and Finance regarding the housing needs of veterans, including draft legislation addressing those needs, where the need is greatest and the need for additional veterans homes.

CHAPTER 264


[Passed March 4, 2019; in effect from passage.]
[Approved by the Governor on March 25, 2019.]

AN ACT to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to providing that a license to carry a concealed deadly weapon currently in effect expires on the holder’s birthday occurring during the fifth year
of licensure or five years from the date of issuance, whichever is later in time; providing that renewals of such licenses and licenses newly issued after the effective date of the amendments to this section are valid for five years from the licensee’s birthday, and maintaining provisions making licenses subject to revocation for cause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in §61-7-4(h) of this code, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of $75, of which $15 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code. Concealed weapons license may only be issued for pistols and revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant’s full name, date of birth, Social Security number, a description of the applicant’s physical features, the applicant’s place of birth, the applicant’s country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U.S.C. § 922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide United States citizen or legal resident thereof and resident of this state and of the county in which the application is made and has a valid driver’s license or other state-issued photo identification showing the residence;
(3) That the applicant is twenty-one years of age or older;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside or the applicant’s civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subdivision (7) of this subsection in the five years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33), or a misdemeanor offense of assault or battery either under §61-2-28 of this code or §61-2-9(b) or §61-2-9(c) of this code, in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence
protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant’s right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under the provisions of §61-7-7 of this code or federal law, including 18 U.S.C. § 922(g) or (n), from receiving, possessing, or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon: Provided, That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of §61-
7-7 of this code or federal law, including 18 U.S.C. § 922(g) or (n).

(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff’s office, as the sheriff considers appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: Provided, That the completed course includes the actual live firing of ammunition by the applicant:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;
(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or National Guard or proof of other handgun qualification received while serving in any branch of the United States military, reserve or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class is evidence of qualification under this section and shall include the instructor’s name, signature and NRA or state instructor identification number, if applicable.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under §39-4-1 et seq. of this code. Falsification of any portion of the application constitutes false swearing and is punishable under §61-5-2 of this code.

(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue, or deny the license within 45 days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of $25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within 30 days of receipt. A license in effect as of the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature shall, subject to revocation for cause, be valid until the licensee’s birthday during the fifth year from the date of issuance or five years from the date of issuance,
whichever is later in time. Renewals of such licenses and licenses newly issued after the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature shall, subject to revocation for cause, be valid for a period of five years from the licensees’ most recent birthday.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section. All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties in size, appearance and information and shall feature a photograph of the licensee.

(i) The Superintendent of the West Virginia State Police, in cooperation with the West Virginia Sheriffs’ Bureau of Professional Standards, shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within 30 days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court’s findings of fact and conclusions of law. If the final
order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney’s fees, payable by the sheriff’s office which issued the denial.

(k) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of $5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a concealed weapon license moves from the address named in the application to another county within the state, the license remains valid for the remainder of the five years unless the sheriff of the new county has determined that the person is no longer eligible for a concealed weapon license under this article, and the sheriff shall issue a new license bearing the person’s new address and the original expiration date for a fee not to exceed $5: Provided, That the licensee, within 20 days thereafter, notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

(n) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.
(o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) Notwithstanding subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by §7-14-1 et seq. of this code; §8-14-1 et seq. of this code; §15-2-1 et seq. of this code; and §20-7-1 et seq. of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this section are applicable to these applicants.

(q) Information collected under this section, including applications, supporting documents, permits, renewals or any other information that would identify an applicant for or holder of a concealed weapon license, is confidential: Provided, That this information may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 or more than $200 for each offense.

(r) A person who pays fees for training or application pursuant to this article after the effective date of this section is entitled to a tax credit equal to the amount actually paid for training not to exceed $50: Provided, That if such training was provided for free or for less than $50, then such tax credit may be applied to the fees associated with the initial application.

(s) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.
AN ACT to amend and reenact §23-5-7 of the Code of West Virginia, 1931, as amended, relating to compromise and settlement of certain workers’ compensation claims; and providing that occupational hearing loss and hearing impairment claims are not nonorthopedic occupational disease claims for the purpose of the requirement that a claimant be represented by counsel in a settlement for medical benefits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. REVIEW.


(a) The claimant, the employer, and the Workers’ Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes: Provided, That in the settlement of medical benefits for nonorthopedic occupational disease claims, the claimant shall be represented by legal counsel: Provided, however, That for the purposes of this section, the term “nonorthopedic occupational disease claim” does not include an occupational hearing loss or hearing impairment claim. If the employer is not active in the claim, the commission, the successor to the commission, other private
insurance carriers, and self-insured employers, whichever is applicable, may negotiate a final settlement with the claimant and the settlement shall be made a part of the claim record. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insured employer and its sureties or guarantors, or both, as provided in §23-2-5 or §23-2-5a of this code.

(b) Each settlement agreement shall provide the toll-free number of the West Virginia State Bar Association and shall provide the injured worker with five business days to revoke the executed agreement. The Insurance Commissioner may void settlement agreements entered into by an unrepresented injured worker which are determined to be unconscionable pursuant to criteria established by rule of the commissioner.

(c) The amendments to this section enacted during the regular session of the Legislature, 2015, apply to all settlement agreements executed after the effective date.
AN ACT to authorize the expenditure of surplus funds by the Wyoming County Commission.

Be it enacted by the Legislature of West Virginia:

WYOMING COUNTY SHERIFF’S OFFICE K-9 UNIT.

§1. County commission authorized to create special fund for the Wyoming County Sheriff’s Department for a K-9 unit to assist with drug searches.

1 The County Commission of Wyoming County is hereby authorized and empowered to use any unexpended sums and surpluses, presently or hereafter existing, in the General Fund or in any special fund for the Wyoming County Sheriff’s Department to establish a K-9 Unit to assist with drug searches.
The first column gives the number of the bill and the second column gives the chapter assigned to it.

**Regular Session, 2019**

**HOUSE BILLS**

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Regular Session, 2019

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